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**CA FINAL**

**SUBJECT- CORPORATE AND  
ECONOMIC LAWS**

**Test Code – FNJ 7385**

**BRANCH - () (Date :)**

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## ANSWER 1

| Q.NO | ANSWER | MARKS |
|------|--------|-------|
| 1.1  | C      | 1     |
| 1.2  | C      | 1     |
| 1.3  | B      | 1     |
| 1.4  | B      | 1     |
| 1.5  | C      | 1     |
| 1.6  | D      | 1     |
| 1.7  | C      | 1     |
| 1.8  | C      | 1     |
| 1.9  | B      | 1     |
| 1.10 | B      | 1     |

## ANSWER 2

| Q.NO | ANSWER | MARKS |
|------|--------|-------|
| 2.1  | C      | 2     |
| 2.2  | A      | 2     |
| 2.3  | C      | 2     |
| 2.4  | D      | 2     |
| 2.5  | A      | 2     |

## ANSWER 3

| Q.NO | ANSWER | MARKS |
|------|--------|-------|
| 3.1  | A      | 2     |
| 3.2  | C      | 2     |
| 3.3  | C      | 2     |
| 3.4  | D      | 2     |
| 3.5  | B      | 2     |

## ANSWER 4(a)

(i)

**(i) Political Contribution:** As per section 182, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.

Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the financial year to which the account relates.

In the given case BoD of Srajan Ltd. proposed political contribution of 1 Lac for the financial year 2017-2018. As per the above provision, any amount can be contributed by Srajan Ltd. through the resolution passed at a meeting of the Board of Directors authorising the making of such contribution. Such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the

contribution authorised by it. So, the political contribution proposed is well within the powers of the Board. Such a proposal shall be passed at a meeting through the resolution authorising such contribution and full disclosure of the name of political party and amount contributed shall be made in the profit and loss account.

**(ii) Charitable Contribution:** As per the facts, the Board of Directors of Srajan Ltd., proposed to donate Rs. 2,00,000 to a school established exclusively for the benefit of the employees of the company. As per section 181 of the Companies Act, 2013, the Board of Directors of a company may contribute to bona fide charitable and other funds. A contribution by a company is said to be charitable contribution if it is made without any object of availing any benefit for the company or for its employees and such contribution does not have any direct relation with the business of the company.

Since, here the contribution proposed is for the school which is exclusively for the benefit of the employees' children. Therefore, it cannot be considered as charitable within the meaning of section 181.

**(4 marks)**

**ANSWER 4(a)**

**(ii)** The official liquidator can involve the provisions contained in Section 328 of the Companies Act, 2013 to recover the sale of assets of the company. According to Section 328, If the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

Since in the present case, the sale of immovable property took place on 15<sup>th</sup> October, 2016 and the company went into liquidation on 10<sup>th</sup> March, 2017 i.e., within 6 months before the winding up of the company and since the sale has resulted in a loss of INR 50 lakhs to the company.

The official liquidator will be able to succeed in proving the case under Section 328 by way of fraudulent preference as the property was sold to a private company in which the son of the ex – managing was interested.

Hence, the transaction made will be regarded as invalid and restore the position of the company as if no transfer of immovable property has been made.

**(4 marks)**

**ANSWER 4(b)**

**(i)** Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board / Committee meetings or for any other purpose as may be decided by the Board, provided that the amount of such fees shall not exceed the amount as may be prescribed. The Central Government through rules prescribed that the amount of sitting fees payable to a director attending meetings of the Board or committees thereof may be decided by the Board of Directors or the Remuneration Committee thereof which shall not exceed the sum of Rs. 1 lac per meeting of the Board or committee thereof. Further, the Board may decide different sitting fee payable to independent and non – dependent directors other than whole – time directors.

From the above, it is clear that fee to independent directors can be increased from Rs. 30000 to Rs. 45000 per meeting by passing a resolution in board meeting and altering the Articles of Association by passing special resolution.

**(3 marks)**

**ANSWER 4(b)****(ii)**

According to section 2(42) of the Companies Act, 2013, “foreign company” means any company or body corporate incorporated outside India which –

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode ;and
- (b) conducts any business activity in India in any other manner.

According to the Companies (Registration of Foreign Companies) Rules, 2014, “electronic mode” means carrying out electronically based, whether main server is installed in India or not, including, but not limited to –

- (a) business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;
- (c) financial settlements, web based marketing, advisory and transactional services, data base services and products, supply chain management ;
- (d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (e) all related data communication services whether conducted by e – mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Looking to the above description, it can be said that being involved in business activity through telemarketing, Robertson Ltd., will be treated as foreign company.

**(3 marks)****ANSWER 5(a)****(i)**

According to sections 421 of the Companies Act, 2013, any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal within a period of forty - five days from the date on which a copy of the order of the Tribunal is made available to the person. However extension of further 45 days may be granted as per proviso to section 421(3).

Whereas section 422 of the Companies Act, 2013, states that every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal within 3 months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

Where any application or petition or appeal is not disposed of within the period specified above, the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to above, by such period not exceeding ninety days as he may consider necessary.

Accordingly, as per the provisions, following are the answer:

- (i) Filing of an appeal before NCLAT is in order as per section 421. As per the given facts, appeal is made within 45 days from the date on which a copy of the order of the Tribunal is made available to the person.
- (ii) As per section 422, appeal preferred before the NCLAT, shall be disposed within 3 months from the date of its presentation before the Appellate Tribunal. Where any application or petition or appeal is not disposed of within the period specified

above, the Appellate Tribunal, shall record the reasons for the same; and the President or the Chairperson, may, after taking into account the reasons so recorded, extend the period referred to above, by such period not exceeding ninety days as he may consider necessary. So accordingly appeals should be disposed off by the NCLAT latest by May 2018.

(4 marks)

**ANSWER 5(a)**

(ii)

According to Section 213(b)(i) of the Companies Act, 2013, the Tribunal may, on filling of an application by any other person (not being a member of company) or otherwise, if the Tribunal is satisfied that there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose, may order after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.

(4 marks)

**ANSWER 5(b)**

(i)

Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)] Section 2(u) defines 'person' under clause (viii) thereof, as person would include any agency, officer or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi). Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'.

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

However, Dubai Branch though not owned is controlled by Print unit in Pune which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Dubai Branch is a person resident in India.

(3 marks)

**ANSWER 5(b)**

(ii) There are two basic types of arbitration agreement are :

(a) **Arbitration clause** – a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.

(b) **Submission agreement** – an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.

In this case, the agreement already carries the term that all disputes shall be arbitrated in Mumbai at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise.

(3 marks)

**ANSWER 6(a)****(i)**

(a) Resignation of Director (Section 168 of the Companies Act, 2013)

A director may resign from his office by giving a notice in writing to the company. The Board shall on receipt of such notice take note of the same. The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR – 12 and post the information on its website, if any.

Such director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in Form DIR – 11 along with the prescribed fee. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

In the present case, Mr. Arthav, a director resigns after giving due notice to the company and he forwards a copy of resignation in e – form DIR – 11 to the RoC within the prescribed time.

If the company fails to intimate about the resignation of Mr. Arthav to RoC, even then the resignation of Mr. Arthav shall take effect from the date on which the notice is received by the company or the date, if any, specified by Mr. Arthav in the notice, whichever is later.

(b) According to section 161(3) of the Companies Act, 2013, subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

The Articles of Association of Superwood Limited do not confer upon the Board of Directors any such power. Hence, the Board cannot appoint Mr. Ramakant as a nominee director even on the request of a bank which has extended a long term financial assistance to the company.

**(4 marks)****ANSWER 6(a)**

**(ii)** Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis – management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below :

(i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.

(ii) In the case of company not having share capital, not less than one – fifth of the total number of its members.

Since the group of shareholders do not number 100 or hold 1/10<sup>th</sup> of the issued share capital or constitute 1/10<sup>th</sup> of the total number of members, they have no right to approach the Tribunal for relief.

However, the Tribunal may, on an application made to it waive all or any of the requirements specified in (i) or (ii) so as to enable the members to apply under section 241.

As regards obtaining relief from Tribunal, continuous losses cannot, by itself, be regarded as oppression (Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth).

Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression. (Thomas Veddon V.J.(v) Kuttanad Robber Co. Ltd.).

Thus, the shareholders may not succeed in getting any relief from Tribunal.

**(4 marks)**

**ANSWER 6(b)**

- (i) Section 25 of the Prevention of Money Laundering Act, 2002 empowers the Central Government to establish an Appellate Tribunal to hear appeal against order of the Adjudicating Authority and other authorities under the Act.

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. Any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal within a period of 45 days from the date on which a copy of the order is received by him. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Act also provides further appeal. According to Section 42 any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the provisions of the Act explained above the company is advised to prefer an appeal to Appellate Tribunal in the first instance.

**(3 marks)**

**ANSWER 6(b)**

- (ii) In the present case, Sohan Lal, a farmer, who was involved in embezzlement of opium cultivated by him shall be said to have committed a scheduled offence under the Paragraph 2 of Part A of Schedule to the Prevention of Money Laundering Act, 2002. It covers offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 whereby, embezzlement of opium by cultivator (section 19) is an offence which is illegal by law and hence the person involved in the proceeds of crimes arising out of the commission of scheduled offences shall be liable for commission of trial under PMLA.

Accordingly, as per section 4 of the PMLA, 2002, Sohan Lal shall be liable for the rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine.

**(3 marks)**

**ANSWER 7(a)**

- (i) As per section 11(4) of the Securities and Exchange Board of India Act, 1992, the Board may, by an order, for reasons to be recorded in writing, in the interest of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely :-
1. Suspend the trading of any security in a recognized stock exchange ;
  2. Restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
  3. Suspend any office – bearer of any stock exchange or self – regulatory organization from holding such position;
  4. Impound and retain the proceeds or securities in respect of any transaction which is under investigation;
  5. Attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder :

However only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached ;

6. Direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.

(4 marks)

**ANSWER 7(a)**

(ii) Section 7(A) of the Securities (Contracts) Regulation Act, 1956 provides that a recognised stock exchange is empowered to amend rules to provide for all or any of the following matters:

- (a) Restriction of voting right to members only.
- (b) Regulation of voting rights by specifying that each member is entitled to one vote only irrespective of number of shares held.
- (c) Restriction on right of members to appoint proxy.
- (d) such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (a), (b) and (c).

As such Cochin Stock Exchange can restrict the appointment of MNL Ltd., as proxy, if rules of the exchange so provide. If it is not so provided, rules may be amended and after getting approval of the Central Government regarding amendment, it can restrict appointment of proxies.

Cochin Stock Exchange can also restrict the voting rights of PQR Ltd. if rules of the exchange so provide. If it is not so provided, rules maybe amended and after getting approval of Central Government regarding amendment, it can restrict the voting rights of PQR Ltd. on appointment of proxies.

(4 marks)

**ANSWER 7(b)**

**Definition of "Foreign Hospitality"**

**"Foreign hospitality"** means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any fore ign country or territory or with free boarding, lodging, transport or medical treatment. [Section 2(i) of the Foreign Contribution (Regulation) Act, 2010]

**Whether Mr. Satish can avail foreign Hospitality?**

As per Section 6 of the Act, Office bearers of political parties require prior approval from Ministry of Home Affairs before accepting Foreign Hospitality. In the instant case, Mr. Satish, General Secretary of a political party, before availing foreign hospitality shall require prior approval from Ministry of Home Affairs.

**Exceptions**

It shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India. But, where such foreign hospitality has been received, the person receiving such hospitality shall give an intimation to the Central Government as to the receipt of such hospitality within one month from the date of receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received.

(6 marks)



**ANSWER 8(a)**

(i) The provisions related to the Dormant companies is covered under section 455 of the Companies Act, 2013. According to provisions –

1. a company is formed and registered under this Act for the purpose of a future project or to hold an asset or intellectual property and has no significant accounting transactions.
2. Such company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
3. The Registrar shall allow the status of a dormant company to the applicant and issue a certificate after consideration of the application.
4. The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Register shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. However, the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

Thus, JKL Research Development Limited may follow the above procedure to obtain the status of a 'Dormant Company'.

**(4 marks)**

**ANSWER 8(a)**

(ii) According to section 230(7) of the Companies Act, 2013, an order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—

- (a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;
- (b) the protection of any class of creditors;
- (c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;
- (d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;
- (e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement.

The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order. [Section 230(8)]

**(4 marks)**

**ANSWER 8(b)**

**Cancellation of Certificate of Registration (Section 4 of the securitisation & reconstruction of financial assets & enforcement of Security Interest Act, 2002)**

As per the section 4 of the Securitisation & Reconstruction of Financial Assets & Enforcement of security Interest Act, 2002, Reserve Bank may cancel a certificate of registration granted to a securitization company or a reconstruction company, if such company –

- (i) ceases to carry on the business of securitisation or asset reconstruction; or
- (ii) ceases to receive or hold any investment from a qualified institutional buyer; or
- (iii) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
- (iv) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub – section (3) of section 3; or
- (v) fails to –
  - (a) comply with any direction issue by the Reserve Bank under the provisions of this Act; or
  - (b) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or
  - (c) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
  - (d) obtain prior approval of the Reserve Bank required under sub – section (6) of section 3.

**(6 marks)**

**ANSWER 9(a)**

(i)

**(a) Power of central Government to appoint company prosecutors** : This section lays down the provisions seeking to provide that the Central Government may appoint company prosecutors with the same powers as given under the Cr. PC on Public Prosecutors.

**(1) Appointment of company prosecutors** : The Central Government may appoint (generally, or for any case, or in any case, or for any specified class of cases in any local area) one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act; and

**(2) Powers and Privileges** : The persons so appointed as company prosecutors shall have all the powers and privileges conferred on Public Prosecutors appointed under section 24 of the Cr. PC.

**(b) Appeal against acquittal** : According to section 444 of the Companies Act, 2013, the Central Government may, in any case arising under this Act, direct -

- (1) any company prosecutor, or
- (2) authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court.

Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the Appellate Court.

**(4 marks)**

**ANSWER 9(a)****(ii)**

To consider the appointment of Mr. Nirman as Company Secretary and Compliance Officer of ABC Ltd.:

“RESOLVED THAT pursuant to the provisions of section 203 of the Companies Act, 2013 read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, approval of the Board be and is hereby given to appoint Mr. Nirman as Whole Time Company Secretary of ABC listed company, with effect from 11<sup>th</sup> January 2019, to perform the duties which shall be performed by a Company Secretary under the Companies Act, 2013 and other duties as assigned to him by the Board from time to time.

“RESOLVED FURTHER that Mr. Nirman be and is hereby appointed as Compliance Officer of the company as per the Regulation 6 of the SEBI (LODR) Regulations, 2015 with effect from 11<sup>th</sup> January 2019.

**(4 marks)****ANSWER 9(b)**

As per section 53 of the Insolvency and Bankruptcy Code, 2016, the proceeds from the sale of liquidation assets shall be distributed in the following order of priority:

**Insolvency Resolution Process Cost and Liquidation cost to be paid in full**

|       |  |           |
|-------|--|-----------|
| (i)   | Fees payable to Resolution Professional in full  | 75,000    |
| (ii)  | Expenses incurred by the Resolution professional in running the business on going concern  | 25,000    |
| (iii) | Workmen salary outstanding for a period of 24 months (proportionate to 24 months only). The balance Rs. 60,000 is considered as remaining debts and dues and will be settled before preference shareholder/equity shareholder. | 2,40,000  |
| (iv)  | Secured creditor who has relinquished the security   | 5,00,000  |
| (v)   | Unsecured Financial Creditors  | 4,00,000  |
| (vi)  | Income- tax payable with in the period 2 years   | 50,000    |
| (vii) | Cess to State Government payable with in a period of one year  | 20,000    |
| (vii) | Balance amount in workmen salary   | 60,000    |
|       | Total distribution in the above priority   | 13,70,000 |
|       | Amount realized from the sale of liquidation of assets   | 14,00,000 |
|       | Balance available to Equity share holder on pro rata basis   | 30,000    |

**(6 marks)**