



FINAL CA – NOV 2018
SUB: CORPORATE AND ALLIED
LAWS

Topics: ALLIED LAWS

Test Code – CF10

Branch (MULTIPLE) (Date :)
(50 Marks)

Note: All questions are

compulsory.

Question 1 (5 marks)

1. Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case

2. The rule which is also known as 'purposive construction' or mischief rule, enables consideration of four matters in construing an Act:

- (1) what was the law before the making of the Act;
- (2) what was the mischief or defect for which the law did not provide;
- (3) what is the remedy that the Act has provided; and
- (4) what is the reason for the remedy.

3. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it.

Question 2 (5 marks)

1. Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal for the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act.

2. Any reporting entity aggrieved by any order of the Director made under sub-section (2) of section 13 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 made by the Adjudicating Authority or Director is received.

3. The Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

4. On receipt of an appeal under sub-section (1), or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

5. The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.

Question 3 (6 marks)

1. Once a company is registered as a securitisation company or reconstruction company, it must obtain prior approval of the Reserve Bank for the following purposes:-

- (a) any substantial change in its management
- (b) change of location of its registered office
- (c) change in its name

2. The decision of the Reserve Bank, whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not, shall be final and binding. The expression "substantial change in management" means the change in the management by way of transfer of shares or amalgamation or transfer of the business of the company.

3. Therefore, prior approval of the RBI is required in order to invoke a change in the management which in the opinion of the RBI is substantial.

Question 4 (6 marks)

A)

As per Section 2(7A), "Indian insurance company" means any insurer being a company which is limited by shares and-

- (a) which is formed and registered under the Companies Act, 2013 as a public company or is converted into such a company within one year of the commencement of the Insurance Laws (Amendment) Act, 2015;
- (b) in which the aggregate holdings of equity shares by foreign investors, including portfolio investors, do not exceed forty-nine per cent. of the paid up equity capital of such Indian insurance company, which is Indian owned and controlled, in such manner as may be prescribed.;
- (c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business;

B)

As per Section 2(8A), "insurance co-operative society" means any insurer being a co-operative society,-

(a) which is registered as a co-operative society under the Co-operative Societies Act, 1912 (2 of 1912) or under any other law for the time being in force in any State relating to Co-operative Societies or under the Multi-State Co-operative Societies Act, 1984;

(b) having a minimum paid-up capital of rupees one hundred crore

in case of life insurance business, general insurance business and health insurance business;

(c) in which no body corporate, whether incorporated or not, formed or registered outside India, either by itself or through its subsidiaries or nominees, at any time, holds more than 49% of the capital of such Co-operative Society;

(d) whose sole purpose is to carry on life insurance business or general insurance business or health insurance in India.

C)

As per Section 2(9), "Insurer" means-

(a) an Indian Insurance Company, or

(b) a statutory body established by an Act of Parliament to carry on insurance business, or

(c) an insurance co-operative society, or

(d) a foreign company engaged in re-insurance business through a branch established in India

Question 5 (6 marks)

1. As per Section 9, Notwithstanding anything contained in Sec. 6, no banking company shall hold any immovable property, howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of this Act, whichever is later or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be.

2. Notwithstanding anything contained in Sec. 6 or in any contract, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in connexion with the realization of security given to or held by it, or engage in any trade, or buy, sell or barter goods

3. Therefore, Land being immovable property, cannot be held by the Bank for a period of more than 7 years. Also, by virtue of Section 8, the bank cannot operate a vineyard for dealing in grapes as it is prohibited.

Question 6 (5 marks)

Initiation of corporate insolvency resolution process by financial creditor.

Section 7 of the Insolvency and Bankruptcy Code, 2016 state the manner of initiation of corporate insolvency resolution process by financial creditor. According to the provision, a

financial creditor either by itself or jointly with other financial creditors may file an application against a corporate debtor before the Adjudicating Authority (Tribunal) when a default has occurred.

The financial creditor shall, along with the application furnish the following informations—

- (a) **record of the default** recorded with the information utility or such other record or evidence of default as may be specified;
- (b) **the name of the resolution professional** proposed to act as an interim resolution professional; and
- (c) **any other information** as may be specified by the Board.

The Adjudicating Authority shall, within fourteen days of the receipt of the application, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor. Adjudicating Authority if, satisfied that a default has occurred and complying with other requirements of the section, it may, by order, admit such application; or if, default has not occurred, it may, by order, reject such application.

Commencement of corporate insolvency resolution process: The corporate insolvency resolution process shall commence from the date of admission of the application. The Adjudicating Authority shall communicate— the order to the financial creditor within seven days of admission or rejection of such application and to the corporate debtor.

Question 7 (5 marks)

Section 5 deals with combination of enterprises and persons. The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if any acquisition where—

1. the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—

- (A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
- (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or

2. the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,—

- (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or
- (B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India or turnover more than six billion US dollars including at least rupees fifteen hundred crores in India.

Question 8 (5 marks)

In pursuance of provisions of Section 3 of FEMA, the Reserve Bank has granted general permission to any person to receive any payment made in rupees by order or on behalf of a person resident outside India during his stay in India by converting the foreign exchange into rupees by sale to an authorised person,

1. Made by means of a cheque drawn on a bank outside India or a bank draft or travellers cheques issued outside India or made in foreign currency notes directly, from out of India provided the cheques, drafts or foreign currency is sold to an authorised person within seven days of its receipt;

2. By means of a postal order or postal money order issued by a post office outside India;

3. Reserve Bank has also granted general permission to a person resident in India to make payment in rupees :

- for extending hospitality to a person resident outside India who is on a visit to India;
- to a person resident outside India for purchase of gold or silver imported by such person in accordance with the provisions of any order issued by Central Government under the Foreign Trade (Development and Regulation) Act, 1992 or under any law or rules or regulations in force.

4. General permission has also been granted to a company in India to make payment of sitting fees or commission or remuneration or travel expenses to and from or within India to its whole time director who is on a visit to India for company's work in accordance with the Company's Memorandum or Articles of Association or any agreement or resolution passed by the company in general meeting or by the Board of directors provided that the legal requirements applicable for making such payments are duly complied with.

Question 9 (5 marks)

Section 5 of the Securities Contracts (Regulation) Act, 1956 empowers the Central Government to withdraw the recognition granted to a stock exchange. The circumstances and procedure to be followed for withdrawal of such recognition is stated below

1. if considering the interest of the trade or the public interest, the Central government is of the opinion that the recognition granted to a stock exchange should be withdrawn, the Central Government shall serve a written notice on the governing body of the stock exchange.

2. The said notice shall specify the reasons for the proposed withdrawal of the recognition.

3. The governing body of the stock exchange shall be afforded an opportunity of being heard by the Central Government.

4. Even after hearing the governing body, the Central Government is satisfied that the recognition granted to the stock exchange should be withdrawn; the Central Government may, by way of a notification in the Official Gazette, withdraw the recognition granted to the stock exchange.

5. The proviso to the said section 5 states that no such withdrawal shall affect the validity of any contract entered into or made prior to the date of notification withdrawing the recognition and the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification for the due performance of any contracts outstanding on that date.

Question 10 (4 marks)

As per Section 28A of the SEBI Act , 1992 , If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

1. attachment and sale of the person's movable property;
2. attachment of the person's bank accounts;
3. attachment and sale of the person's immovable property;
4. arrest of the person and his detention in prison;
5. appointing a receiver for the management of the person's movable and immovable properties
