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FINAL NOVEMBER 2018 EXAM

SUBJECT- CORPORATE AND ALLIED LAW

Test Code - FNJ 7014 O

BRANCH - () (Date :)

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Answer 1:

(A)

As per section 233 (1) of the Companies Act, 2013 notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered between,

- ✓ 2 or more small companies
- ✓ a holding company and its wholly-owned subsidiary company. If 100% of its share capital is held by the holding company, except the shares held by the nominee or nominees to ensure that the number of members of subsidiary company is not reduced below the statutory limit as provided in section 187.
- ✓ such other class or classes of companies as may be prescribed.

The provisions given for fast track merger in the section 233 are in the optional nature and not a compulsion to the company. If a company wants to make application for merger as per section 232, it can do so.

Hence, here the Company Secretary of the XYZ limited has erred in the law and his contention is not valid as per law. The company shall have an option to choose between normal process of merger and fast track merger.

(B)

Under section 173(3) of the Companies Act, 2013 a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Section 173(4) further provides that every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of Rs. 25,000.
In the given case as no notice, was served on Mr. P and Mr. Q who are the directors of the company, thus, under section 173(4) every officer of the company responsible for the default shall be punishable with fine of Rs. 25,000.

Neither the Companies Act, 2013 nor *the Companies (Meetings of the Board and its Powers) Rules, 2014* lay down any specific provision regarding the validity of a resolution passed by the Board of Directors in case notice was not served to all the directors as stipulated in the Act. We shall have to go by the provisons of the Act which clearly provide for the notice to be sent to every director failing which the resolutions passed will be invalid. The Supreme Court, in case of *Parmeshwari Prasad vs. Union of India (1974)* has held that the resolutions passed in the board meeting shall not be valid, since notice to all the Directors was not given in writing. Notice must be given to each director in writing. Hence, even though the directors concerned knew about the meeting, the meeting shall not be valid and resolutions passed at the meeting also shall not be valid.

(C)

Section 1 of the Insolvency and Bankruptcy Code, 2016 specifies of the extent, commencement and applicability of the Code. According to this, it extends to the whole of India and shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of any company incorporated under the Companies Act, 2013 or under any previous law.

In view of this, the IBC Code, 2016 applies to the corporate debtor incorporated under the Companies Act, 2013 or under any previous laws.

As per the definition of the Creditor given in section 3(10) of the Insolvency and Bankruptcy Code, 2016, it means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor, and a decree holder. So, Standard International Ltd. is a creditor under the purview of the Code.

As per the facts given in question, Standard International Ltd., is a foreign trade creditor. He wanted to file a petition under the under Section 9 of the Insolvency and Bankruptcy Code, 2016 for

commencement of Insolvency process against the defaulter in India. Standard International Ltd. was not having any office or bank account in India.

As per the requirement of section 9 of the Code, along with application certain documents were needed to be furnished by the creditor to the Adjudicating authority.

Being a foreign trade creditor, Standard International Ltd was also required to provide a copy of certificate from the financial institutions maintaining accounts of the creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Since, Standard International Ltd. was not having any office or bank account in India, it cannot furnish certificate from financial institution as defined under the section 3(14) of the code. So, Petition under section 9 of the Code is not permissible.

(D)

Enterprise: The term 'enterprise' is defined in section 2(h) of Competition Act, 2002. Accordingly, 'enterprise' means a person or a department of the Government, who or which is engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind. But the term does not include any activity of the Government relatable to sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Certain specific activities of Government departments like dealing with atomic energy, etc. and sovereign functions of the Government (like police, defence, etc.) are excluded from the purview of the said terms. Hence, a Government department engaged in the activity of providing service in the form of supply of water for irrigation to the agriculturists after levying charges can be considered as an 'enterprise' within the meaning of section 2(h) of Competition Act, 2002.

Answer 2:

(A)

Power of Central Government/SEBI to direct rules to be made or to make rules: The Central Government is empowered under section 8 of the Securities Contracts (Regulation) Act, 1956 to issue written order directing all or any of the recognized stock exchanges to make any rules or to amend any rules already made within 2 months from the date of the order in respect of matters specified in section 3(2). One of the matters specified in section 3(2) is the governing body of stock exchange, its constitution and powers of management and the manner in which its business is to be transacted. Hence, the Central Government is empowered to direct the Stock Exchange in respect of prohibition of broker-member being appointed as president of the stock exchange. According to the notification issued by the Central Government under section 29A, this power is also exercisable by SEBI.

If any recognized stock exchange fails or neglects to comply with any order made by SEBI within 2 months, SEBI may itself make the rules made, either in the form prepared in the order or with such modifications thereof as may be agreed to between the stock exchange and SEBI. The amended rules should be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognized stock exchange is situated. After such publication, the rules will be valid, as if they had been made or amended by the stock exchange itself.

Hence, SEBI can issue directions to the recognized stock exchange to amend the rules and if the said stock exchange does not take steps for amending the rules, SEBI may amend the rules on its own by following the procedure laid down in section 8.

(B)

Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to a managerial personnel is linked to the effective capital of the company. Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding Rs. 120 Lakhs in the year in case the effective capital of the company is

between *Rs.* 100 crores to 250 crores. The limit will be doubled if approved by the members by special resolution and further if the appointment is for a part of the financial year the remuneration will be pro-rated.

From the foregoing provisions contained in schedule V to the Companies Act, 2013 the payment of Rs. 50 Lacs in the year as remuneration to Mr. X is valid in case he accepts it, as under the said schedule he is entitled to a remuneration of Rs. 120 Lakhs in the year and his terms of appointment provide for payment of the remuneration as per schedule V.

(C)

Interpretation of the words "Means" and "Includes" in the definitions- The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example-

Definition of Director [section 2(34) of the Companies Act, 2013]- Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.

Definition of Whole time director [Section 2(94) of the Companies Act, 2013]- Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director.

Answer 3:

(A)

As per Section 149(10) of the Companies Act 2013, an Independent Director shall hold office for a term up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. As per section 149(11) no independent director shall hold office for more than two consecutive terms. However, such independent director shall be eligible for appointment after the expiration of three years of ceasing to be an independent director.

The Ministry of Corporate Affairs in its General Circular 14/2014 dated June 09 , 2014 clarified that section 149 (10) of the Act provides for a term of "up to five consecutive years" for an independent director. As such while appointment of an independent director for a term of less than five years would be permissible, appointment o f any term (whether for five years or less) is to be treated as one term under section 149(10) of the Act.

Further under section 149 (11) of the Act, no person hold office of independent director for more than 'two consecutive terms'. Such a person shall have to demit office after the consecutive terms even if the total number years of his appointment in such two consecutive terms is less than 10 years.

Therefore Mr. Robert cannot be appointed as an Independent Director at the AGM proposed to be held in 2018. In such case, the person completing two consecutive terms of less than 10 years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of three years.

(B)

"Money laundering" does not mean just siphoning of fund:

Money Laundering is a moving of illegally acquired cash through financial systems so that it appears to be legally acquired. Thus, money laundering is not just the siphoning of fund but it is the conversion of money which is illegally obtained.

Prevention of Money Laundering Act, 2002 has been enacted with aim for combating channellising of money into illegal activities.

Significance and Aim of Prevention of Money Laundering Act, 2002:

The preamble to the Act provides that it aims to prevent money–laundering and to provide for confiscation of property derived from, or involved in, money–laundering and for matters connected therewith or incidental thereto.

In order to further strengthen the existing legal framework and to effectively combat money laundering, terror financing and cross-border economic offences, an Amendment Act, 2009 was passed. The new law seeks to check use of black money for financing terror activities. Financial intermediaries like full-fledged money changers, money transfer service providers and credit card operators have also been brought under the ambit of The Prevention of Money-Laundering Act. Consequently, these intermediaries, as also casinos, have been brought under the reporting regime of the enforcement authorities. It also checks the misuse of promissory notes by FIIs, who would now be required to furnish all details of their source. The new law would check misuse of "proceeds of crime" be it from sale of banned narcotic substances or breach of the Unlawful Activities (Prevention) Act. The passage of the Prevention of Money Laundering (Amendment), 2009 have enabled India's entry into Financial Action Task Force (FATF), an inter-governmental body that has the mandate to combat money laundering and terrorist financing.

(C)

As per section 411 of the Companies Act, 2013 the qualification of chairperson of NCLAT shall be a person who is or has been a judge of the Supreme Court or the Chief Justice of a High Court. In the given case, chairperson is a judge and not a chief justice of a High Court, so his appointment is invalid. However, Section 431 of the Companies Act, 2013 provides of the provisions that no act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be.

Accordingly, the act or proceeding of the Appellate Tribunal (NCLAT) shall not be invalid on the basis of defect in the constitution of the Appellate Tribunal.

Answer 4:
(A)

(i) According to the section 140(5) of the Companies Act, 2013, without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suomotu or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

Accordingly, in the given question, Tribunal on an application filed by certain directors for removal of auditor of the company on the account of embezzlement of the accounts of the company in the interest of some directors, passed the order for removal.

Referring the above provision, Tribunal, on being satisfied on an application filed by the certain directors alleging that the auditor of a company has embezzled the accounts of the company in the interest of some directors is colluded in the committing of the fraud, it may by order direct the company to change its auditor.

Therefore, the act of tribunal by passing of an order of removal of auditor directing to company is valid.

(ii) Proviso to section 140(5) of the Act provides that an auditor against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the o rder and the auditor shall also be liable for action under section 447.

(B)

Section 2(e) of Foreign Exchange Management Act, 1999 states that 'capital account transactions' means –

(a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India
(b) a transaction which alters assets or liabilities in India of persons resident outside India and includes transactions referred to in section 6(3).

According to the said definition, a transaction which alters the contingent liability will be considered as capital account transaction in the case of person resident in India, but it is not so in the case of person resident outside India.

Purchase of immovable property by Mr. Hillary Benjamin in India is a capital account transaction. It has also been specifically provided in section 6(3)(i) as a capital account transaction.

Guarantee will be considered as a capital account transaction in the following cases:

(1) Guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India.
(2) Guarantee in respect of any liability, debt or other obligation incurred by a person resident outside India. In this case, Mr. Hillary Benjamin, a resident outside India gives a guarantee in respect of a debt incurred by a person resident in India and owed to a person resident in India. Hence, it would appear that guarantee by Mr. Hillary Benjamin cannot be considered as a capital account transaction within the meaning of Section 2(e), particularly because it is a contingent liability.

All capital account transactions are prohibited unless specifically permitted. RBI is empowered to issue regulations in this regard [Section 6(3)]. Permissible capital account transactions by persons resident outside India are given in Schedule II to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. According to the said regulations both the purchase of immovable property by Mr. Hillary Benjamin and guarantee by Mr. Hillary Benjamin are permissible.

(C)

(i)

Yes, as per law, where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case the dividend can be lawfully adjusted by the company against any sum due to it from the shareholder.

Thus, company can adjust sum of Rs. 1 lakh due towards call money on shares against the dividend amount payable to Mr. Alok.

(ii)

According to section 123(5) of the Companies Act, 2013, dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Mr. Ninja, the holder of equity shares transferred the shares to Mr. Raj whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend.

Answer 5:

(A)

According to section 226 of the Companies Act, 2013, an investigation may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—

(a) an application has been made under section 241;
(b) the company has passed a special resolution for voluntary winding up; or
(c) any other proceeding for the winding up of the company is pending before the Tribunal.

In the instant case, Decent Marbles Limited has been incurring business losses for past couple of years. The company passed a special resolution for voluntary winding up. Meanwhile complaints were made to the Tribunal and to the Central Government about foul play of the directors of the company, which adversely affected the interests of shareholders of the company as well as the public.

As, the company has passed a special resolution for voluntary winding up of the company, then also the investigation may be initiated against the company under section 226 of the Companies Act, 2013.

(B)

Section 439 of the Companies Act, 2013 provides that offences under the Act shall be non-cognizable. As per this section:

1. Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.
2. 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 authorized by the Central Government in that behalf.

Thus, in the given situation, the court shall not initiate any suo moto action against the director Mr. X without receiving any complaint in writing of the Registrar of Companies, a shareholder of the company or of a person authorized by the Central Government in this behalf.

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India:

(C)

(i) The minimum contribution that should be made by the promoters should be in accordance with the Regulation 32 (1) of the SEBI (ICDR) Regulations, 2009. According to the said regulations the promoters of the issuer shall contribute in the public issue in case of an initial public offer, not less than twenty per cent. of the post issue capital. In the above case, pre-issued capital is Rs. 3 crores and proposed issue is Rs. 9 crores (90,00,000 equity shares of Rs. 10 each). Of the total post issue capital ie. Rs. 12 crores (Rs. 3 crores + Rs. 9 crores), the promoters have to contribute minimum of Rs. 2.4 crores (20% of Rs. 12 crores). For the purpose of promoters' contribution, the following securities shall be considered as ineligible as per Regulation 33 (i) (b).

Specified securities acquired by promoters during the preceding one year at a price lower than the price at which specified securities are being offered to public in the initial public offer: Provided that nothing contained in this clause shall apply: if promoters pay to the issuer, the difference between the price at which specified securities are offered in the initial public offer and the price at which the specified securities had been acquired.

In the above case, shares acquired by the promoters on 1st January, 2004 shall not be taken into account for the computation of promoter's contribution, as the allotment was made in the

preceding one year. However, shares acquired during the 1st January, 2000 shall be taken into account for promoter's contribution. Further, it is to be noted that there is a difference in price (shares which were earlier acquired at Rs. 10 each as on 1st January, 2000 and the issue price in July, 2004 (Rs. 15 per share). In view of the proviso in the said Regulation, the difference in price Rs. 15 including premium of Rs. 5 per share for issue in July, 2004 and acquisition @ Rs. 10 per share = Rs. 5 per share for 10 lakh equity shares (Rs. 50 lakhs) acquired in 1st January, 2004 need to be brought in by the promoters. In view of the proviso to the said Regulation, the acquisition of shares in July, 2004 of 10 lakh shares will also be taken into consideration for calculating promoters' contribution. Of the total Rs. 2.4 crores issue of shares, if Rs. 2 crores issue already acquired by the promoters are taken into account, then the promoters are eligible to subscribe only for the balance of 4 lakh shares (ie. 2.4 crores – 2 crores = 0.4 crores or 4 lakh equity shares).

(ii) Lock-in of specified securities held by promoters:

As per regulation 36 of the SEBI (ICDR) Regulations, 2009, In a public issue, the specified securities held by promoters shall be locked-in for the period stipulated hereunder:

a) minimum promoters' contribution shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;

b) promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year: Provided that excess promoters' contribution as provided in proviso to clause (b) of regulation 34 shall not be subject to lock-in.

Answer 6:
(A)

Draft Minutes

Minutes of 17th meeting of the Board of Directors of Jai Entertainment Limited held on _____ the _____2017, at B-17, Industrial Area, Suncity

Present :

1. Chairman
2. Director
3. Director

In attendance Secretary

Item No. 1 : Leave of Absence

Leave of absence was granted to_____Director.

Item No. 2 : Confirmation of minutes of the 16th Board meeting :

The minutes of the 16th meeting of the Board of Directors held on _____ were considered and confirmed.

Item No. 3: Appointment of Managing Director:

The Board noted the appointment of Mr. Kaabil, director of the company as the Managing Director of the company. In this connection, the following resolutions were passed:

"Resolved that Mr. Kaabil who fulfils the conditions specified in Parts I and II of Schedule V to the Companies Act, 2013, be and is here by appointed as the Managing Director of the company for a period of five years effective from _____ and that he may be paid remuneration by way of salary, commission and perquisites in accordance with Part II of Schedule V to the Act.

Resolved further that the Secretary of the Company be and is hereby directed to file the necessary returns with the registrar of Companies and to do all acts and things as may be necessary in this

connection."

Item No. 4: Next Board Meeting:
The next meeting of the Board will be held on _____the _____20____ at the registered office of the company. The meeting ended with a vote of thanks to the chair.

(B)

In this case, Mr. Vivaan may opt for 'Option' derivative contract, which is an agreement to buy or sell a set of assets at a specified time in the future for a specified amount. However, it is not obligatory for him to hold the terms of the agreement, since he has an 'option' to exercise the contract. For example, if the current market price of the share is Rs. 100 and he buy an option to sell the shares to Mr. X at Rs. 200 after three-month, so Vivaan bought a put option.

Example:

Now, if after three months, the current price of the shares is Rs. 210, Mr. Vivaan may opt not to sell the shares to Mr. X and instead sell them in the market, thus making a profit of Rs. 110. Had the market price of the shares after three months would have been Rs. 90, Mr. Vivaan would have obliged the option contract and sold those shares to Mr. X, thus making a profit, even though the current market price was below the contracted price. Thus, here, the shares of Travel Everywhere Limited is an underlying asset and the option contract is a form of derivative.

(C)

(1) In accordance with the provisions of the Companies Act, 2013, as contained under section 129(3) and (4):

Where a company has one or more subsidiaries, it shall, in addition to its own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own. The consolidated financial statements shall also be laid before the AGM of the company along with the laying of its own financial statement. The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiaries in Form AOC-1. For the purpose of consolidated financial statements, 'subsidiaries' shall include associate company and joint venture.

(2) According to Companies (Accounts) Rules, 2014, the consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III to the Act and the applicable accounting standards. However, for a company which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions of consolidated financial statements provided in Schedule III to the Act. The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis*, also apply to the consolidated financial statements.

(3) If the financial statements of a company do not comply with the accounting standards, the company shall disclose in its financial statements the following viz.

(a) The deviation from the accounting standards,

(b) The reasons for such deviation, and

(c) The financial effects, if any, arising out of such deviation.

(4) The Central Government may, on its own or on any application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this Section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest. Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

Answer 7:

(A)

Intimation of changes in particulars specified in DIN application: The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for intimation of changes in particulars specified in the DIN application. According to which every individual who has been allotted a DIN under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form DIR-6 in the following manner, namely :-

A. the applicant shall download Form DIR-6 from the portal and fill in the relevant changes, attach copy of the proof of the changed particulars and verification in the Form DIR-7 all of which shall be scanned and submitted electronically;

B. the form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice;

C. the applicant shall submit the Form DIR-6.

(B)

As per provisions of section 581 ZH of the Companies Act, 1956, a Producer Company may, by special resolution, make donation or subscription to any institution or individual for the following purposes:-

(a) For promoting the social and economic welfare of Producer Members or Producers or general public; or
(b) For promoting the mutual assistance principles.

Thus as per the above stated provisions of the Companies Act, 1956, a Producer Company may make a donation by passing a special resolution and for the above mentioned purposes.

The 1st Proviso to the said section 581ZH lays down the monetary limit for making the donation by a Producer Company. According to the said proviso the aggregate amount of all such donation and subscription in any financial year shall not exceed three per cent of the net profit of the Producer Company in the financial year immediately preceding the financial year in which the donation or subscription was made.

Since the net profit of the Producer Company as per its last profit & loss account was Rs. 20.00 lacs, it can make a total donation of Rs. 60,000/- in this year being three percent thereof.

(C)

As per the provisions of Section 12 of the Competition Act, 2002, the Chairman and other Member of CCI shall not, for a period of two years from the date on which he ceased to hold office, accept any employment in or connected with the management or administration of any enterprise, which has been a party to a proceeding before the Commission. However, these provisions will not apply to any appointment in a Government Company or the Central Government or any State Government or local authority or any Corporation established by or under any Central or State or Provincial Act. In view of the aforesaid, Mr. Chetan cannot join M/s. LCD Ltd. On 1st November, 2015 as only one year has expired from the date of his retirement. However, there is no bar for him to join MONA Limited, on 1st April 2015 even earlier than two years of his retirement, since it is a Government Company.

(D)

According to section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, any person aggrieved, by any order made by the Debts

Recovery Tribunal under section 17, may prefer an appeal along with prescribed fees to the Appellate Tribunal within 45 days from the date of receipt of the order of Debts Recovery Tribunal.

Further, no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. However, the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than 25% of debt.

Thus, in the given situation Solomon Optimum Nutrition Limited can appeal to the Appellate Tribunal (now to NCLAT) by following the above provisions.