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FINAL Nov. 2019 EXAM

SUBJECT- LAW

Test Code – FNJ 7172

BRANCH - () (Date :)

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ANSWER : 1

(1 mark x 30 = 30 marks)

1. (c)
2. (a)
3. (c)
4. (b)
5. (c)
6. (a)
7. (b)
8. (c)
9. (c)
10. (c)
11. (b)
12. (a)
13. (d)
14. (c)
15. (c)
16. (d)
17. (a)
18. (a)
19. (b)
20. (d)
21. (a)
22. (a)
23. (b)
24. (b)
25. (a)
26. (b)
27. (d)
28. (b)
29. (a)
30. (a)

ANSWER : 1

(A) In this case -

- (i) ABCD Ltd. is a **Government company** and so it is **prohibited** from making any political contribution .
- (ii) EFG Ltd. has been in **existence for more than 3 financial years** and so it can make political contribution without any limit, provided –
 - (a) The political contribution is made by **passing a resolution at a Board meeting** only ;
 - (b) The company shall **disclose in its profit and loss account**, the amount contributed by it to any political party;
 - (c) The political contribution shall not be made except –
 - by an account payee cheque drawn on a bank ; or
 - by an account payee bank draft; or
 - by use of electronic clearing system through a bank account; or
 - Through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.
- (iii) RST Ltd. **cannot make any political contribution** because the company has **not been in existence for a period of 3 financial years.**

- (B) As per **section 210** of the Companies Act, 2013, the **Central Government is empowered** to order an investigation into the affairs of the company if it is of the opinion that such investigation is necessary –
- on the receipt of a report of the Registrar or inspector under section 208;
 - on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated ; or
 - in public interest

In the given case, the application to the Central Government requesting investigation into the affairs of the company has been made by some shareholders. No general meeting of the company has been held, and no special resolution has been passed that the affairs of the company ought to be investigated. **Since, the requirement of section 210 with respect to passing of the special resolution has not been complied with, the application made by 101 shareholders is bound to be rejected.**

However, section 210 empowers the Central Government to order investigation into the affairs of the company, if the **Central Government is of the opinion that such investigation is in public interest.** Thus, the Central Government has discretion to order the investigation if it is of the opinion that such investigation is necessary in the public interest. Section 210 does not anyway restrict the power of the Central Government to order investigation, i.e. the **Central may make an order of investigation suo motu** or on receipt of an application from any person, if it is of the opinion that such investigation is necessary in the public interest. Therefore, on receiving the application from 101 shareholders, if the Central government, after considering the allegations contained in the application, is of the opinion that an investigation into the affairs of the company is necessary in the public interest, the Central Government may order such investigation. (5 marks)

- (C) The given problem relates to **section 28A** of the Securities and Exchange Board of India Act, 1992.

The legal position

- AS per section 28A, if a person fails to pay the penalty imposed by the adjudicating officer, 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 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 :
 - Attachment and sale of the person's movable property
 - Attachment of the person's bank accounts
 - Attachment and sale of the person's bank accounts
 - Arrest of the person and his detention in prison
 - Appointing a receiver for the management of the person's movable and immovable properties.
- Further, section 28A provides that the Recovery Officer shall be empowered to seek the **assistance of the total district administration** while exercising his powers.

The given problems are answered as under :

- Mr. Ravi has failed to pay the penalty imposed by the Adjudicating Officer. So, the penalties may be recovered by the Recovery Officer in accordance with the provisions contained in section 28A.
The **Recovery Officer is empowered to attach and sell the residential property which was transferred by Mr. Ravi in the name of his sister,** since such transfer was made for **inadequate consideration,** and section 28A empowers the

Recovery Officer to recover the penalty by way of attachment and sale of the person's immovable property.

Further, the Recovery Officer is empowered to **attach the fixed deposits** with banks which were transferred by Mr. Ravi in the name of his son, since such transfer was made for inadequate consideration, and section 28A empowers the Recovery officer to recover the penalty by way of attachment and sale of the person's bank accounts.

- (ii) The Recovery Officer is empowered to seek the assistance of the local district administration so as to enable him to recover the penalty in accordance with the provisions of section 28A.

(5 Marks)

ANSWER : 2

(A) **"Financial asset"** means debt or receivables and includes-

- (i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or
- (ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or
- (iii) a mortgage, charge, hypothecation or pledge of movable property; or
- (iv) any right or interest in the security, whether full or part underlying such debt or receivables; or
- (v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
 - (va) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or
 - (vb) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset;
- (vi) any financial assistance; **[Section 2(l)]**

An asset which is not a financial asset cannot be securitised, acquired or transferred under this Act.

(6marks)

(B) The given problem relates to **section 149(4)** of the Companies Act, 2013 and second proviso to sub – section (1) of section 149 of the Companies Act, 2013 read with **Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014.**

1. As per section 149(4), every listed public company shall have **at least 1/3rd of the total number of directors as independent directors.** For this purpose, any fraction contained in such 1/3rd shall be rounded off as one.

2. As per second proviso to sub – section (1) of section 149 read with Rule 3, every listed company shall have **at least 1 woman director**.
3. Rule 3 further provides that any vacancy in the office of a woman director shall be filled – up by Board at the earliest but not later than –
 - (i) immediately next Board meeting ; or
 - (ii) 3 months from the date of such vacancy, Whichever is later.
4. In the given case, because of vacation of office of director by Mr. D and Mrs. E, -
 - (a) total number of directors have reduced to 5;
 - (b) number of independent directors have reduced to 2(viz. Mr. F and Mr. G);
 - (c) there is no woman director in the company.
5. Even after vacation of office of Mr. D and Mrs. E, the requirement of independent directors being not less than $1/3^{\text{rd}}$ of total number of directors is satisfied. Thus, there is no requirement to appoint any independent director. However, the company is required to appoint at least 1 woman director. Such appointment shall be made by making an appointment by the Board in the next Board meeting or within 3 months of the date of vacancy, whichever is later.
6. After the vacancy in the office of woman director is filled, -
 - (a) total number of directors shall be 6;
 - (b) number of independent directors shall be 2 (assuming that the woman director appointed to fill the vacancy of Mrs. E is not an independent director);
 - (c) there will be 1 woman director.

The above constitution shall be valid as per the provision of section 149(4) and second proviso to section 149(1).
7. To conclude, the **company is required to fill the vacancy of Mrs. E by appointing a woman director**, who may or may not be an independent director.

(8 marks)

ANSWER : 3

- (A) Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.
- (i) In respect of item No.(i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane can not withdraw Foreign Exchange for this purpose.
 - (ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Hence, in respect of item (ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c) read with section 10 of the Foreign Exchange Management Act, 1999.

(4 marks)

(B)

As per section 202 -

- Compensation for loss of office can be paid only to a managing director or whole time director or manager.
- The compensation payable shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term or for 3 years, whichever is shorter.
- The compensation shall be based on the 'average remuneration'. Average remuneration shall be calculated taking into account the remuneration actually earned by the director / manager during 3 years immediately preceding the date of cessation of office.

(2 marks)

The answers to the given problems are as under :

(i) **Maximum amount of compensation to which Mr. Gopi is entitled**

Average remuneration drawn by Mr. Gopi during 3 years immediately preceding the date of cessation office = (Rs. 40 lakh + Rs. 45 lakh + Rs. 50 lakh) /3 = Rs. 45 lakh.

The unexpired residue of term of office of Mr. Gopi (as on 31.3.2018) was 4 years and 3 years, whichever is lower. The lower period is 3 years.

Thus, the maximum amount of compensation to which Mr. Gopi is entitled = Rs. 45 lakh x3 = Rs. 1 crore and 35 lakhs.

(1.5 marks)

(ii) **Whether Mr. Gopi would have been entitled for compensation, if had been an ordinary director ?**

Had Mr. Gopi been an ordinary director, he would not have been entitled to any compensation, since compensation can be paid only to a managing director or whole time director or manager, i.e. section 202 prohibits payment of compensation to an ordinary director.

(1.5 marks)

(C) 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.

(1.5 marks)

ANSWER : 4

(A)

The given problem relates to section 439 of the Companies Act, 2013.

As per **section 439**, 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** made by –

- (i) The Registrar;
- (ii) A shareholder of the company;
- (iii) A person authorized by the Central Government in that behalf;
- (iv) A person authorized by the Securities and Exchange Board of India, in case of an offence relating to issue and transfer of securities and non – payment of dividend.

In the given case, no person as mentioned in section 439 has filed any complaint with the Court. On the basis of a **news published in a newspaper**, the **Court cannot take cognizance of any offence against any director of the company**. In other words, the Court cannot take the cognizance of such offence suo motu.

(4 marks)

(B) The given problem relates to **section 12** of the **Prevention of Money – Laundering Act, 2002**.

As per **section 12**, every reporting entity shall **maintain record of documents** evidencing **identity of its clients and beneficial owners** as well as account files and business correspondence relating to its clients. These records shall be maintained for a **period of 5 years** after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

(2 marks)

In the given case, Manav Kalyan closed the current account with a Bank on 30th June, 2016. Thus, the bank is required to maintain the record of documents evidencing identity of Manav Kalyan and beneficial owners of Manav Kalyan as well as account files and business correspondence relating to Manav Kalyan upto 5 years from 30th June, 2016 viz. upto 30th June, 2021.

(2 marks)

(C)

The given problem relates to **section 7** of the Insolvency and Bankruptcy Code, 2016.

Section 7 empowers a financial creditor to file an application before the Adjudicating Authority for **initiating corporate insolvency resolution process** against a corporate debtor who has committed a default, by complying with the requirements contained in section 7.

As per section 7, the application shall be in such form and manner and accompanied with such fee as may be prescribed and following **documents and information** shall be furnished along with the application:

- (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.
- (c) Any other information as may be specified by the Board. **(2.5 marks)**

In the present case, Best Bank (viz. a financial creditor) has made an application to the Adjudicating Authority against XYZ Limited (viz. the corporate debtor). In the application made to the Adjudicating Authority, Best Bank has claimed that XYZ Limited has defaulted in payment of Rs. 29.8 crores whereas in the demand notice sent to XYZ Limited, Best Bank has claimed Rs. 10.2 crores.

The issue raised in the given problems is as under :

Whether an application made by a financial creditor is valid if there is difference between the amount specified in the demand notice and amount specified in the application made to the Adjudicating Authority ?

The similar facts came before the National Company Law Appellate Tribunal (NCLAT) in Starlog Enterprises Ltd. v. ICICI Bank Ltd. It was established before NCLAT that ICICI Bank Ltd. (i.e. the financial creditor) had wrongly calculated the default amount as Rs. 29.8 crores. NCLAT held that by showing an incorrect claim, moving the application in a hasty manner and obtaining an ex – parte order from the adjudicating authority, the financial creditor cannot disprove its malafide intention.

The Insolvency and bankruptcy Code, 2016 does not provide for any such mechanism whereby after the admission of its application, the applicant financial creditor can modify the amount of its claim.

The facts in the given problem are similar to the facts in Starlog Enterprises Ltd. v ICICI Bank Ltd. Therefore, the contention of XYZ Limited is correct, and the application made by Best Bank is not maintainable.

As per Section 6, corporate insolvency resolution process may be initiated in respect of a corporate debtor by –

- (a) The financial creditor; or
- (b) The operational creditor; or
- (c) The corporate debtor itself.

(3.5 marks)

ANSWER : 5

(A)

Generally, any dispute involving private rights, which may be submitted to a civil court for resolution, can be submitted to arbitration. However, **certain disputes cannot be referred to arbitration, like matrimonial disputes**, disputes with respect to criminal matters, disputes with respect to testamentary matters (e.g. a dispute with respect to validity of will of a deceased), etc.

In the given case, the **dispute is with respect to genuineness of a will**. This dispute falls under 'testamentary matters,' and so such dispute cannot be referred to arbitration.

Accordingly, **commencement of legal proceedings in the Court by Shyam is valid**. Therefore, Ram's application to the Court for stay of legal proceedings is not tenable.

(3 marks)

(B)

On receipt of a complaint of unethical practices against the members of the governing body of a recognized stock exchange, the Central Government is empowered to take the following actions.

1. Withdrawal of recognition (Section 5)

As per section 5, the Central Government may withdraw the recognition granted to a stock exchange 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 give an opportunity of being heard to the governing body. The withdrawal of recognition shall be published in the Official Gazette.

(2 marks)

2. Supersession of the governing body (Section 11)

Section 11 empowers the Central Government to supersede the governing body of a recognized stock exchange. It may also appoint any person or persons to exercise all the powers and perform all the duties of the governing body. Where the Central Government appoints more than one person, it may appoint one of such persons to be the chairman and another to be the vice – chairman of the governing body. The Central Government shall have these powers notwithstanding anything contained in any other law for the time being in force. An order of supersession shall require the fulfillment of all the following conditions:

- (a) The Central Government shall serve on the governing body a written notice that it is considering the supersession of the governing body.
- (b) The Central Government shall specify the reasons in the notice given to the governing body.
- (c) The Central Government shall give an opportunity of being heard to the governing body.
- (d) The Central Government must form an opinion that the governing body of the stock exchange should be superseded.
- (e) The Central Government shall issue a notification in the Official Gazette that the governing body of the stock exchange has been superseded. **(3 Marks)**

(C)

The given problem relates to section 327 of the Companies Act, 2013. As per **section 327**, following debts shall be paid in priority to all other debts (termed as 'preferential payment'):

- (a) All **wages and salaries of any employee**, due for a **period not exceeding 4 months within 12 months** before the relevant date. However, such amount payable to any employee shall not exceed the amount as may be notified.

Thus, the whole amount of wages of Rs. 30,000 shall not amount to preferential payments. Wages for a period of 4 months within 12 months preceding the relevant date (subject to a maximum of such amount as may be notified) shall amount to preferential payments.

- (b) **All sums due to any employee** from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company.

Thus, Rs. 1 lac due from Provident fund and Rs. 50,000 due towards gratuity shall amount to preferential payments.

- (c) The **expenses of any investigation** held in pursuance of section 213 and 216, in so far as they are payable by the company. Thus, Rs. 20,000 payable by the company on account of expenses incurred in respect of investigation held under Section 213 of the Companies Act, 2013, amounts to preferential payments. **(6 Marks)**

ANSWER : 6

(A)

Under section 177(1) of the Companies Act, 2013 the Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. Therefore, MNC Ltd being a listed company will be bound to constitute an audit committee under the Act.

Further under section 177(2) the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.

Further, the majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement.

The draft Board Resolution for the constitution of an Audit Committee may be as follows:

“Resolved that pursuant to the provision contained in section 177 of the Companies Act 2013 and the applicable clause of Listing Agreement with the Mumbai Stock Exchange, an Audit Committee of the Company be and is hereby constituted with effect from the conclusion of this meeting, with members as under:

1. Mr. A -- An Independent Director.
2. Mr. B -- An Independent Director
3. Mr. C -- An Independent Director
4. Mr. D -- An Independent Director
5. Mr. FE -- Financial Executive
6. Mr. MD -- Managing Director

Further resolved that the Chairman of the Committee, who shall be an Independent Director, be elected by the committee members from amongst themselves.

Further resolved that the quorum for a meeting of the Audit Committee shall be the chairman of the Audit Committee and 2 other members (other than the Managing Director),.

Further resolved that the terms of reference of the Audit Committee shall be in accordance with the provisions of section 177(4) of the Companies Act, 2013.

Further resolved that the Audit committee shall conduct discussions with the auditors periodically about internal control system, the scope of audit including the observations of the auditors.

Further resolved that the Audit Committee shall review the quarterly and annual financial statements and submit the same to the Board with its recommendations, if any.

Further resolved that the recommendations made by the Audit Committee on any matter relating to financial management including the audit report shall be binding on the Board. However, where such recommendations are not accepted by the Board, the reasons for the same shall be recorded in the minutes of the Board meeting and communicated to the shareholders.

Further resolved that the Company Secretary of the Company shall be the Secretary to the Audit Committee.

Further resolved that the Chairman of the Audit Committee shall attend the annual general meeting of the Company to provide any clarifications on matters relating to audit as may be required by the members of the company.

Further resolved that the Board's Report/Annual Report to the members of the Company shall include the particulars of the constitution of the Audit Committee and the details of the non acceptance of any recommendations of the Audit Committee with reasons therefor."

B. (i) Following actions can be taken against the persons involved in Money Laundering:-

- (a) Attachment of property under Section 5, seizure/ freezing of property and records under Section 17 or Section 18. Property also includes property of any kind used in the commission of an offence under PMLA, 2002 or any of the scheduled offences.
- (b) Persons found guilty of an offence of Money Laundering are punishable with imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also be liable to fine [Section 4].
- (c) When the scheduled offence committed is under the Narcotics and Psychotropic substances Act, 1985 the punishment shall be imprisonment for a term which shall not be less than three years but which may extend up to

ten years and shall also be liable to fine.

- (d) The prosecution or conviction of any legal juridical person is not contingent on the prosecution or conviction of any individual.

(ii) Appointment of resolution professional by CoC

The Committee of Creditors (CoC), may, in the first meeting, by a majority vote of not less than sixty six per cent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional (section 22(2) of Insolvency Code, 2016).

If they decide to continue interim resolution professional, subject to a written consent from the interim resolution professional in the specified form they will inform its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority (section 22(3)(a) of Insolvency Code, 2016).

However, if they decide to replace the interim resolution professional, the CoC shall file application before the Adjudicating Authority for the appointment of Resolution Professional, along with a written consent from the proposed resolution professional in the specified form (section 22(3)(b) of Insolvency Code, 2016).

The Adjudicating Authority (NCLT) shall inform name of proposed new Resolution Professional to IBBI. The resolution professional can be appointed only with approval of Board (IBBI). Till then, the interim resolution professional will continue.