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SUBJECT- LAW

Test Code – FNJ 7307

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SECTION –B

ANSWER -1

ANSWER –A

Section 229 of the Companies Act, 2013 states that where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

- (a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;
- (b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or
- (c) provides an explanation which is false or which he knows to be false,
-he shall be punishable for fraud in the manner as provided in section 447. As per the above provisions:
 - (i) With respect to this part of the question, the person shall be liable for fraud. Since, in the given case, he is a party in the manipulation of documents relating to the transfer of securities and in the register of members of the company which is under investigation.
 - (ii) Employee shall not be liable here, as the said company in which he is an

employee, is not undergoing investigation. Secondly, the person purchasing the shares can act with due diligence before purchasing shares rather fully relying on the publicity made on social networking.

(6 MARKS)

ANSWER –B

(i) **Validity of RoC's action:** According to Section 271(d) of the Companies Act, 2013, a Company may, on a petition under Section 272, be wound up by the Tribunal, if the Company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.

In the instant case, the move by RoC to present a petition to Tribunal for the winding up of Clarks Limited is not valid as the Company has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2019.

Time limit for passing of an Order under section 273: An order under section 273 of the Act shall be made within ninety days from the date of presentation of the petition.

(4 MARKS)

(ii) **Contributory:** According to section 285 of the Companies Act, 2013, as soon as may be after the passing of a winding up order by the Tribunal, the Tribunal shall settle a list of contributories.

While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

Liability of the contributory: a person who has been a member shall not be liable to contribute if he has ceased to be a member for the preceding one year or more before the commencement of the winding up.

In the given case, M/s, IJK Ltd. was wound up on 15th March 2018. Whereas Mr. A ceased to be a member of the company from 1st June, 2017. So, according to the above provision, Mr. A will be a contributory and be liable to contribute as the time period of one year from the commencement of winding up has not elapsed. So Mr. A is liable to deposit Rs. 5000 (if any unpaid on the shares in respect of which he is liable as member [Section 285 (3) (d)]) as his contribution towards the liability on the shares previously held by him.

(4 MARKS)

ANSWER -2

ANSWER –A

Scheme of Compromise or arrangement (Section 230 of the Companies Act, 2013): The scheme provides for sacrifice on the part of creditors as they have to forego 50% of their dues to the company. The company is sick and therefore it can be considered as a company liable to be wound up within the meaning of Section 230(a) of the Companies Act, 2013. The proposed scheme involves as a compromise or arrangement with creditors and it attracts section 230.

While the company or any creditor or member can make application to the Tribunal under section 230 (6)(1), it is usual for the company to make an application. On such application, the

Tribunal may order that a meeting of creditors and/or members be called and held as per directions of the Tribunal.

Company must arrange to send notice of meeting to every creditor containing a statement setting forth the terms of compromise or arrangement explaining its effect. Material interest of directors, Managing Director, or manager of the company in the scheme and the effect of scheme on their interest should be fully disclosed [Section 230(1)(a)]. Advertisement issued by the company must comply with the requirements of section 230(2). At the meetings convened, as per directions of the Tribunal, majority in number representing at least ninety percent in value of creditors present and voting (either in person or by proxy if allowed) must agree to compromise or arrangement.

Thereafter the company must present a petition to the Tribunal for confirmation of the compromise or arrangement. The notice of application made by the company will be served on the Central Government and the Tribunal will take into consideration representation, if any made by the Central Government. The Tribunal will sanction the scheme, if it is satisfied that the company has disclosed all material facts relating to the company e.g. latest financial position, auditors report on accounts of the company, pendency of investigation of company, etc.

Copy of Tribunal order must be filed with the Registrar of Companies and then only the order will come into effect. Copy of Tribunal order must be annexed to every Memorandum of Association issued thereafter.

If the Tribunal sanctions the scheme, it will be binding on all members and creditors even those who were dissenting. (Case Law: *S. K. Gupta Vs. K. P. Jain, AIR 1979 SC 374*)

(8 MARKS)

ANSWER –B

According to section 21A of the Securities Contracts (Regulation) Act, 1956 the delisting of securities may take place in the following manner:-

- (1) A recognized stock exchange may delist the securities, after recording the reasons therefore, from any recognized stock exchange on any of the ground/s as may be prescribed under this Act.

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard,

- (2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognized stock exchange delisting the securities within fifteen days from the date of the decision of the recognized stock exchange delisting the securities and the Provisions of section 22B to 22E of this Act, shall apply as far as may be, to such appeals.

Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.

(6 MARKS)

ANSWER -3

ANSWER –A

According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

In the given question, Board appoints Mr. Replacement, in the place of Mr. Single as an alternate director. Mr. Replacement was also holding directorship in XYZ Ltd. So, as the per above provision, Mr. Replacement shall not be appointed as an alternate director due to his holding of directorship in the same company in which he is appointed as an alternate director. So his appointment is invalid.

(4 MARKS)

ANSWER –B

Resolution passed at the meeting of Board of Directors of BLM Limited held at its registered office situated ----- on -----, 2019 at----- A.M.

RESOLVED THAT the Board do hereby appoint Mr.----- Director of the company as Authorized Signatory for enrolment of the Company on the Goods and Service Tax (GST) System Portal and to sign (physically or digitally as and when required) and submit various documents electronically and/or physically and to make applications, communications, representations, modifications or alterations and to give explanations on behalf of the Company before the Central GST and/or the concerned State GST authorities as and when required.

FURTHER RESOLVED THAT Mr. _____, Director of the company be and is hereby authorized to represent the Company and to take necessary actions on all issues related to goods and service tax including but not limited to presenting documents/records etc. on behalf of the Company representing for registration of the Company and also to make any alterations, additions, corrections, to the documents, papers, forms, etc., filed with tax authorities and to provide explanations as and when required.

FURTHER RESOLVED THAT Mr. -----, Director of the company be and is hereby authorized on behalf of the company to sign the returns, documents, letters, correspondences etc. physically/digitally and to represent on behalf of the company, for assessments, appeals or otherwise before the goods and service tax authorities as and when required.

(4 MARKS)

ANSWER –C

Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:

- (i) is, or at any time has been adjudicated as insolvent;
- (ii) is of unsound mind and stands so declared by a competent court;
- (iii) has been convicted of an offence which, in the opinion of the Central

Government, involves a moral turpitude has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Zubin, a member of the SEBI is being adjudicated as an insolvent. His state of position may effect on rendering of his services in a biased manner. This may be unfavorable to the public interest and so should be removed from his office.

Here, above complainants may approach the Central Government for removal of Mr. Zubin, and if the Central Government is of the opinion that Mr. Zubin was not competent in rendering of his services/duties in a office as a member of the Board. The Central Government may remove Mr. Zubin from his office in compliance with the said provision.

(6 MARKS)

ANSWER -4

ANSWER –A

Under section 380(1) of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration of the following documents:

- (a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors and secretary of the company containing such particulars as may be prescribed;

In relation to the nature of particulars to be provided as above, the *Companies (Registration of Foreign Companies) Rules, 2014*, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

- (1) personal name and surname in full;
- (2) any former name or names and surname or surnames in full;
- (3) father's name or mother's name and spouse's name;
- (4) date of birth;
- (5) residential address;
- (6) nationality;
- (7) if the present nationality is not the nationality of origin, his nationality of origin;
- (8) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
- (9) income-tax permanent account number (PAN), if applicable;

- (10) occupation, if any;
 - (11) whether directorship in any other Indian company, (Director Identification Number(DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
 - (12) other directorship or directorships held by him;
 - (13) Membership Number (for Secretary only); and
 - (14) e-mail ID.
- (d) the name and address or the names and addresses of one or more persons resident in India authorized to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
 - (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
 - (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
 - (g) declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad;
 - (h) and any other information as may be prescribed.

(8 MARKS)

ANSWER –B

As per the definition of Foreign Contribution given in section 2(1)(h) of FCRA 2010, "Foreign contribution" means the donation, delivery or transfer made by any foreign source,-

- (i) of any article, (except given as a gift for personal use), if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf:
- (ii) of any currency, whether Indian or foreign; security and includes any foreign security under the Foreign Exchange Management Act,1999

As per explanation to the section, a donation, delivery or transfer of any article, currency or foreign security so referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

Whereas the foreign source as per the definition given in section 2(j) of the FCRA includes a foreign company. Since the Max Ltd. is a foreign company, so donation made by the Max Ltd is a foreign contribution for the religious and charitable purpose.

Whereas, Religious Trust can accept foreign contribution with prior permission of Central Government, if it is not registered under the FCRA But where if the Religious trust is registered under the FCRA [section 11 of FCRA 2010], it may accept the foreign contribution within the limit without seeking prior permission.

(6 MARKS)

ANSWER -5

ANSWER –A

Establishment of Appellate Tribunal

According to section 25 of the Prevention of Money Laundering Act, 2002, the Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

Appeals to Appellate Tribunal

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

The appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Adjudicating Authority is received and it shall be in such form and be accompanied by prescribed fees. 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.

Appeals to High Court

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.

(6 MARKS)

ANSWER –B

According to Section 202 of the Companies Act, 2013, compensation can be paid only to a Managing, Whole-time Director or Manager. Amount of compensation cannot exceed the remuneration which he would have earned if he would have been in the office for the unexpired term of his office or for 3 years whichever is shorter. No compensation shall be paid, if the director has been found guilty of fraud or breach of trust or gross negligence in the conduct of the affairs of the company.

In light of the above provisions of law, the company is not liable to pay any compensation to Mr. Doubtful, if he has been found guilty of fraud or breach of trust or gross negligence in the conduct of affairs of the company. But, it is not proper on the part of the company to withhold the payment of compensation on the basis of mere allegations. The compensation payable by the company to Mr. Doubtful would be Rs. 25 Lacs calculated at the rate of Rs. 12 Lacs per annum for unexpired term of 25 months.

Regarding adhoc payment of Rs. 5 Lacs, it will not be possible for the company to recover the amount from Mr. Doubtful in view of the decision in case of *Bell vs. Lever Bros. (1932) AC 161*

where it was observed that a director was not legally bound to disclose any breach of his fiduciary obligations so as to give the company an opportunity to dismiss him. In that case the Managing Director was initially removed by paying him compensation and later on it was discovered that he had been guilty of breaches of duty and corrupt practices and that he could have been removed without compensation.

(4 MARKS)

ANSWER –C

Financial creditor can initiate corporate insolvency resolution process himself or jointly with other financial creditors against corporate debtor on default of payment of debt of Rs. 1,00,000 or more. Assignee of financial debt is also financial creditor as per section 5(7) of the IBC, 2016. Mr. M's application can be accepted by NCLT if company fails to pay debt within stipulated time. Application should be supported with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.

(4 MARKS)

ANSWER -6

ANSWER –A

The contract for supply of components entered into between Broadway Infrastructure Limited and Royal forgings, a partnership firm (in which wife of Mr. Patrick, a director of the company is a partner) attracts Section 184, 188 and 189 of the Companies Act, 2013.

As per Section 188, company cannot enter into contract with firm for supply or purchase of goods or material where director of company or his relative is partner of firm without approval of Board of directors at board meeting. As per Section 184, interested directors must disclose his interest at board meeting at which said business is to be discussed. Interested directors should not take part in the discussion or voting at board meeting. If he does vote, his vote shall not be counted. In case of Private limited Company interested director can participate in the board meeting after disclosure of interest.

As per Section 189, prescribed particulars of the contract must be entered into the Register of Contract in which directors are interested in Form MBP-4. Every entry made in Register should be authenticated by Company Secretary of company or any other person authorized by Board. After each entry in the register, it shall be placed before the next board meeting and shall be signed by all the directors present thereat.

Based upon discussion of the above provisions:

If the value of the contract or transaction is exceeded than limit specified, prior approval of shareholders is required to be obtained. Question does not suggest value of transaction. Assuming that it is within limits specified under the Act, consent of shareholders is not required.

If Royal forgings is a private limited company: The provision of Section 188 are applicable to it. As the directors wife (i.e Patrick's wife) is member of Royal forgings private limited.

Section 184 is not applicable as Mr. Patrick, director of Broadway Infrastructure Limited is neither director nor holding any shares in Royal Forgings Private Limited. Shares held by Mr. Patrick's wife are not to be considered. Hence the provisions of Section 184 are not attracted.

ANSWER –B

According to section 185 of the Companies Act, 2013, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

Thus, guarantee by Company XLS Ltd. of which Mr. KMP is a director, for repayment of the loan and interest as per the terms of the proposed agreement is not allowed.

Further, If any loan is advanced or a guarantee or security is given or provided in contravention of the above provisions, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to 6 months or with fine which shall not be less than five lakh rupees but which may extend to twenty- five lakh rupees, or with both.

(4 MARKS)

ANSWER –C

The official liquidator can invoke 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 15th October, 2016 and the company went into liquidation on 10th 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)