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**CA FINAL N'19**

**SUBJECT- LAW**

**Test Code – FNJ 7319**

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

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## SECTION – A

1. B
2. B
3. D
4. B
5. B
6. B
7. B
8. A
9. D
10. B
11. C
12. B
13. B
14. C
15. C
16. B
17. B
18. C
19. C
20. C

## SECTION – B

### ANSWER - 1

- (a) In accordance with the provision of the Companies Act, 2013, as contained in section 152(7)(a) which provides that if at the annual general meeting at which a director retires and the vacancy is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned to same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

Section 152(7)(b) further provides that if at the adjourned meeting also, the place of the retiring is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless at the adjourned meeting or at the previous meeting a resolution for the reappointment of such directors was put and lost or he has given a notice in writing addressed to the company and the Board of Directors expressing his desire not to be re-elected or he is disqualified.

**(4 Marks)**

Therefore, in the given circumstances answer to the questions as asked shall be:

- (i) In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.
- (ii) In the second case, where the resolutions for the reappointment of the retiring directors were lost, the retiring directors shall not be deemed to have been re-appointed.
- (iii) Section 152(6)(c) states that 1/3<sup>rd</sup> of the rotational directors shall retire at every AGM. They retire at the AGM and at its conclusion. Hence, they will retire as soon as the AGM is held. Further, as per section 96 (dealing with annual General Meeting) of the Companies Act, 2013, every company other than a One Person Company shall in each year hold an Annual General Meeting. Hence, it is necessary for the company to hold the AGM, whereby these directors will be liable to retire by rotation.

Further Section 97 states that, if any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company. Such general Meeting shall be deemed to be an annual general meeting of the company under this Act.

**(4 Marks)**

- (b) (i) As per the given facts, Mr. Sudhir, a director of M/s Tristar Ltd., was also a member of M/s PTC private Ltd. with which he entered into contract for the purchase of the raw material. In terms of section 2(76) of the Companies Act, 2013, M/s Tristar Ltd. is a related party to M/s PTC private Ltd..

Also, as per section 188(1) of the Act, no company shall enter into any contract or arrangement with a related party with respect to the transaction related to the sale, purchase or supply of any goods or materials or made through an appointment of any agent for purchase or sale of goods, materials, services or property, except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as given in rule 15 of the *Companies (Meetings of Board and its Powers) Rules, 2014* .

However, no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as prescribed in Rule 15(3) of the *Companies (Meetings of Board and its Powers) Rules, 2014*, shall be entered into except with the prior approval of the company by a resolution. [First proviso to section 188(1)]

A company shall not enter into transaction/s related to sale, purchase or supply of any goods or materials, directly or through appointment of agent, where the transaction or transactions to be entered into is amounting to 10% or more of the turnover of the company or rupees 100 crore, whichever is lower, except with the prior approval of the company by a resolution.

Since in the given case, M/s Tristar Ltd. has turnover of Rs. 700 crore. The transaction of purchase settled by Mr. Sudhir, is Rs. 85 crore which is more than 10% of the turnover (i.e., 700 crore x10/100= 70 crore). Neither M/sTristar Ltd. had taken prior approval of the company by a resolution, nor it was ratified by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into. [Section 188(3)]

**(4 Marks)**

- (i) So, in terms of the above provision, this contract is of voidable nature at the option of the shareholders according to section 188(3) of the Companies Act, 2013.
- (ii) **Contravention of Section 188(1):** Yes, as per the answer given under Part (i), there is a contravention of section 188(1).

**Following is the liability of the Sudhir, Director of M/s Tristar Ltd:** Section 188(3) specifies, if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

Therefore, M/s Tristar Ltd, may proceed to recover loss. Section 188 (4) provides that it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

**Penalty:** Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees.

- (iii) **Appointment of Director in M/s Raaga Ltd.:** As per section 164(1)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as a director of a company, where he has been convicted of the offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years;

In the given instance, Mr. Sudhir was not convicted rather only the contract was challenged in the board meeting considering it as a related party transaction which is in contravention to section 188(1) and may attract penalty in terms of Section 188(5) against the offence dealt with related party transaction hence Mr. Sudhir remains eligible to be appointed as a director of M/s Raaga Ltd.

**(2 Marks)**

## **ANSWER - 2**

- (a) (i) Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:
- (1) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.
- (2) In the case of company not having share capital, not less than one-fifth of the total number of its members.

As per the facts, a group of 30 members decided to file a petition. Total number of members are 500 & one tenth of 500 will be 50 and lower of above is 50. Thus, the group of shareholders who decides to file the petition are less than

50. However, the group of 30 members holds one-fifteenth of the issued share capital which is less than the required one tenth of the issued share capital. In view of this, the

group is not having requisite number of shares and shareholding for being eligible to approach the Tribunal for relief.

Also, the shareholders may not succeed in getting any relief from the tribunal as continuous losses cannot, by itself, be regarded as oppression (*Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth*). Similarly, the failure to declare dividend or payment of low dividends also does not amount to oppression. (*Thomas Veddon V.J. Vs. Kuttanad Rubber Co. Ltd.*)

**(4 Marks)**

**(ii)** As per section 230 (6), of the Companies Act, 2013 where majority of persons at a meeting held representing 3/4<sup>th</sup> in value, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing 3/4<sup>th</sup> Value shall be counted of the following:

- the creditors, or
- class of creditors or
- members or
- class of members, as the case may be,

Usage of word “majority” in the provision is dual in nature i.e., may be taken into account in number & in value. A simple majority of those voting is sufficient. Whereas the ‘three-fourths’ requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case, out of 1000 members, 800 members attended the meeting and 450 members voted in favor of the scheme, thus, the requirement relating to majority in number (i.e. more than 325) is satisfied.

Further, as per the facts, total 650 members participated in the meeting holding 3,00,000 shares. According to the provision, three-fourth of which works out to 2,25,000, while 450 members who voted for the scheme held 2, 40,000 shares.

Hence, the requirements as to the holding of 3/4<sup>th</sup> values of shares as a majority is also met.

Therefore, the scheme is approved by the requisite majority.

**(4 Marks)**

**(b) Sub-section (4) of section 13 of SARFAESI Act, 2002**, provides that if the borrower fails to discharge his liability in full within the 60 days, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:

- (i) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
- (ii) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

- (iii) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
- (iv) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

In the instant case, the Bank may take the above mentioned procedure to enforce its security interest in case Popular Limited has failed to discharge its liabilities within the time limit specified.

**(6 Marks)**

### **ANSWER – 3**

**(a)** According to section 301 of the Companies Act, 2013, at any time either before or after passing a winding up order, if the Tribunal is satisfied that

- a contributory or
- a person having property, accounts or papers of the company in his possession is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, the Tribunal may cause—

- (a) the contributory to be detained until such time as the Tribunal may order; and
- (b) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.

**(6 Marks)**

In the instant case, by taking into account the above provisions:

- (i) The Tribunal's order for detention of contributory for next 6 months disallowing him to leave India, is valid.
- (ii) It is correct from Tribunal's part to arrest and seize books of accounts from the person planning to abscond to avoid examination of books of accounts in respect of the affairs of the company.

**(2\*1 = 2 Marks)**

**(b) (i)** Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereby, illegal import into India, export from India or trans shipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

**Punishment:** Section 4 of the said Act provides for the punishment for Money- Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years. Thus, in the given case, the maximum punishment may extend to 10 years.

**(2 Marks)**

- (ii) Section 45 of the Prevention of Money Laundering Act, 2002 provides that the offences under the Act shall be cognizable and non bailable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence [under this Act shall be released on bail or on his own bond unless-
- (i) The Public Prosecutor has been given an opportunity to oppose the application for such release and
- (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the the Special Court so directs.

In compliance to above provision, Mr. Robert can be released on bail.

**(4 Marks)**

#### **ANSWER – 4**

- (a) Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. However, the Central Government may in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000.

The Rules stipulate some prohibitions and restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:

- (i) Drawl of foreign exchange for securing health insurance from a company abroad does not fall under any of the Schedules I, II or III. Therefore, such a transaction is permitted without any restriction or condition.
- (ii) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits payment of commission on exports under Rupees State Credit Route (except commission upto 10% of invoice value of exports of tea and tobacco). Therefore, payment of commission on exports under Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

**(4 Marks)**

- (b) **Restoration of Registration:** As per section 14(3) of the Foreign Contribution (Regulation) Act, 2010, any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

In the instant case, Toastea Ltd. is not eligible for re-registration or grant of prior permission as only 2.5 years have passed since such cancellation. So, requirement of 3 years of cooling period from the date of cancellation of such certificate for re-registration is not complied with.

**Circumstances for cancellation of certificate of registration [Section 14(1) of the Foreign Contribution (Regulation) Act, 2010]**

- (i) The Central Government may, by an order, cancel the certificate if —
- (a) the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or
  - (b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or
  - (c) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or
  - (d) the holder of certificate has violated any of the provisions of this Act or rules or order made there under; or
  - (e) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

**(6 Marks)**

**(c) There are the basic types of arbitration agreement:**

- a. **Arbitration clause** - a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.
- b. **Submission agreement** - an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.

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

In the second case, the Principal contract (JVA) does not have any term relating to arbitration. Disputes arose between the parties concerning quality of supplied goods in 2019. To resolve this dispute, parties later entered into an agreement "That all disputes including quality of goods supplied by Ronnie and Coleman Company Limited to Almond Food Processors Limited shall be submitted to arbitration". The parties hereby agree to abide by the decision of the arbitrator". Such an agreement that is made after the disputes have arisen would be called a submission agreement.

**(4 Marks)**

## ANSWER – 5

- (a) (i) According to section 455 of the Companies Act, 2013, an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Here, “*inactive company*” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

Gulmohar Ltd., since from last two years is not carrying on business or operations and has not filed financial statements and annual returns saying it has not made any significant accounting transaction during the last two financial years. Thus, it falls within the definition of inactive company as stated above and hence is eligible to apply to Registrar of Companies to obtain the status of Dormant company.

**(2 Marks)**

- (ii) According to Explanation to section 455, “*significant accounting transaction*” means any transaction other than—
- (1) payment of fees by a company to the Registrar;
  - (2) payments made by it to fulfill the requirements of this Act or any other law;
  - (3) allotment of shares to fulfill the requirements of this Act; and
  - (4) payments for maintenance of its office and records.

Thus, Gulmohar Ltd. is still eligible to apply to the Registrar of Companies to obtain the status of Dormant company even if it has continued ‘payment of fees to Registrar of Companies and payment of rentals for its office and accounting records’ for last two years, as these transactions have been kept outside the purview of significant accounting transactions.

**(2 Marks)**

- (iii) According to the Rule 3 of the *Companies (Miscellaneous) Rules, 2014*, a company may make an application in prescribed form to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4<sup>th</sup> shareholders (in value).

Thus, special resolution is a pre- requisite to make an application to Registrar of Companies for obtaining the status of dormant company.

**(2 Marks)**

- (iv) According to the Rule 3 of the *Companies (Miscellaneous) Rules, 2014*, a company shall be eligible to apply under this rule only, if no inspection, inquiry or investigation has been ordered or taken up or carried out against the company.

According to section 455(6), the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of section 455.

In the given case, Gulmohar Ltd. was not eligible to apply for the status of a dormant company as an investigation was pending against the company which was ordered 6 months ago. But since, it has already made an application and then it came to the light about the pending investigation against the company, the Registrar shall not register it as a dormant company and if already registered as a dormant company, strike off the name of a dormant company from the register of dormant companies as the company has contravened the necessary requirements.

**(2 Marks)**

**(b) The priority order in which the liquidator shall distribute the proceeds will be as under:**

Particulars	Amount (in Rs.)	
Amount realised from the sale of liquidation of assets		7,00,000
Less: (i) Fees payable to resolution professional	37,500	
(ii) Expenses incurred by the resolution professional in running the business of M/s Star House (P) Ltd. on going concern	<u>17,500</u>	(55,000)
Balance available		6,45,000
Less: (i) Secured creditors who has relinquished the security	2,50,000	
(ii) Workmen salary payable for a period of 24 months preceding the liquidation commencement date [1,50,000*(24/30)]	<u>1,20,000</u>	(3,70,000)
Balance available		<b>2,75,000</b>
Less: Unsecured Financial Creditor	2,00,000	<b>(2,00,000)</b>
Balance available		<b>75,000</b>
Less: (i) Income tax payable	25,000	
(ii) Cess payable to State Government	10,000	<b>(35,000)</b>
Balance available		<b>40,000</b>
Less: Balance Workmen salary payable (apart for a period of 24 months preceding the liquidation commencement date) [1,50,000 – 1,20,000]	30,000	<b>(30,000)</b>
Balance Available for equity shareholders		<b>10,000</b>

**(6 Marks)**

## ANSWER – 6

- (a) According to section 161(4) of the Companies Act, 2013, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

In the given question, the casual vacancy caused due to death of Mr. Anmol (who was appointed by the company in AGM held on 30.9.2016, for a period of 3 years) is filled by the Board of Directors by appointing Mr. Prateek for a period of three years. However, the appointment of Mr. Prateek for a period of three years is in contravention of above stated provisions as he can hold office only up to the date up to which Mr. Anmol would have held office if it had not been vacated.

Further, as per the provisions of the Act, the appointment of Mr. Prateek ought to be approved by members in the immediate next general meeting. However, the appointment of Mr. Prateek was not even proposed or approved in the AGM held on 29.9.2018. Hence, the appointment of Mr. Prateek is in contravention of the provisions of the Companies Act, 2013. Therefore, the opinion of CFO is correct.

**(4 Marks)**

- (b) According to section 164(2) of the Companies Act, 2013, no person who is or has been a director of a company which—
- (a) has not filed financial statements or annual returns for any continuous period of three financial years; or
- (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

Also, according to section 167(1)(a), the office of a director shall become vacant in case he incurs any of the disqualifications specified in section 164;

Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.

**(4 Marks)**

Thus, in the light of the said provisions of the Act and the facts of the question:

- (i) Yes, Mr. Dhruv is disqualified under the Companies Act, 2013, as M/s LT Limited did not file financial statements for a period of three years. Also, the M/s LT Limited has defaulted in the repayment of matured deposits taken from public since 1<sup>st</sup> April, 2017 (i.e. the default has continued for more than one year).

Mr. Dhruv can continue as a director in M/s LT Limited as proviso to section 167(1)(a) provides that where the director incurs disqualification under section 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section. Whereas he has to vacate the office of director in M/s XT Limited.

Mr. Dhruv cannot be reappointed (in the AGM to be held in September 2019) as director in M/s. XT Limited.

- (ii) Mr. Dhruv cannot be appointed as an Additional Director (in the AGM to be held in June 2019) of M/s MN Limited because as per section 164(2), he is not eligible to be appointed in other company for a period of five years from the date of such default.

**(2 Marks)**

- (c) 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.

**(4 Marks)**