



FINAL – November 2017

Allied LAW

Test Code – P 46

Branch (MULTIPLE) (Date : 13.08.2017)

(50 Marks)

Note: All questions are compulsory.

Question 1

Securities and Exchange Board of India (SEBI) was established for regulating the various aspects of stock market. One of its functions is to register and regulate the stock brokers. In the light of this, Mr. Sponsor is advised that the complaint against the erring stock broker may be submitted to SEBI. **(1 mark)**

The grounds on which or the defaults for which complaints may be made to SEBI are as follows:

- (a) Any failure on the part of the stock broker to issue contract notes in the form and manner specified by the stock exchange of which the stock broker is a member. **(1 mark)**
- (b) Any failure to deliver any security or any failure to make payment of the amount due to the investor in the manner within the period specified in the regulations. **(2 mark)**
- (c) Any collection of charges by way of brokerage which is in excess of the brokerage specified in the regulations. **(1 mark)**

Question 2

Residential Status

According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. **(1 Mark)**

However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period. **(1 Mark)**

Generally, a student goes out of India for a certain period. In this case, Mr. Suri who resided in India during the financial year 2014-15 left on 15.7.2015 for Switzerland for pursuing higher studies for 2 years, he will be resident for 2015-16, as he has gone to stay outside India for a 'certain period' (If he goes abroad with intention to stay outside India for an 'uncertain period' he will not be resident with effect from 15-7-2015) **(2 Marks)**

Mr. Suri will not be resident during the Financial Year 2016-2017 as he did not stay in India during the relevant financial year i.e. 2015-16. **(1 Mark)**

Question 3

Removal of Member of Competition Commission (Section 11 of the Competition Act, 2002):

Provisions of section 11(2) of the Competition Act, 2002 empowers the Central Government to remove, by an order, a member of the Competition Commission of India from his office if such member has acquired such financial interest as is likely to affect prejudicially his functions as a Member of the Competition Commission. **(2 Marks)**

However, provisions of section 11(3) of the said Act put some restrictions on such powers of the Central Government. According to this section, in case as stated in the question, the Central Government wants

to remove a member of the Competition Commission from his office, it has to make a reference to the Supreme Court. **(1 Mark)**

The Supreme Court shall hold an enquiry in accordance with the procedure formulated by it and then report that the member in question ought to be removed from his office. **(1 Mark)**

Thus, the Central Government can remove a member of Competition Commission from his office by following the above procedure. So, contention of X is incorrect with respect to his removal by the Central Government. **(1 Mark)**

Question 4 (6 marks)

- (i) **Comprehensive Law:** Insolvency Code is a comprehensive law which envisages and regulates the process of insolvency and bankruptcy of all persons including corporates, partnerships, LLPs and individuals.
- (ii) **Withering away of Multiplicity of Laws:** The Code has withered away the multiple laws covering the recovery of debts and insolvency and liquidation process and presents singular platform for all the reliefs relating to recovery of debts and insolvency.
- (iii) **Low Time Resolution :** The Code provides a low time resolution and defines fixed time frames for insolvency resolution of companies and individuals. The process is mandated to be completed within 180 days, extendable by maximum of 90 days. Further, for a speedier process there is provision for fast-track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.
- (iv) **One Window Clearance:** The Code has been drafted to provide one window clearance to the applicant whereby he gets the appropriate relief by the same authority unlike the earlier position of law wherein case the company is not able to revive the procedure for winding up and liquidation, has to be initiated under separate laws governed by separate authorities.
- (v) **Clarity in Process:** There is a clear and unambiguous process to be followed by all stakeholders. There is also shift of control from shareholders and promoters to creditors.
- (vi) **One Chain of Authority:** There is one chain of authority under the Code. It does not even allow the Civil Courts to interfere with the application pending before the adjudicating authority, thereby reducing the multiplicity of litigations. The National Company Law Tribunal (NCLT) will adjudicate insolvency resolution for companies. The Debt Recovery Tribunal (DRT) will adjudicate insolvency resolution for individuals.
- (vii) **Protects the Interests of Workmen and Employees :** The Code also protects the interests of workman and employees. It excludes dues payable to workmen under provident fund, pension fund and gratuity fund from the debtor's assets during liquidation.
- (viii) **New Regulatory Authority :** It provides for constitution of a new regulatory authority, 'Insolvency and Bankruptcy Board of India' to regulate professionals, agencies and information utilities engaged in resolution of insolvencies of companies, partnership firms and individuals. The Board has already been established and has started functioning.
- (ix) **Establishment of Information Utilities (IUs):** A unique feature of code is establishment of Information Utilities (IUs) which are intended to function as a databank to collect, collate and disseminate financial information and to facilitate insolvency resolution. It is envisioned that in the long run, IUs will have data on debts and credits of all the business houses and it will be able to create an automatic trigger in case of default by any debtor and the authority may initiate the insolvency process as required. Such a system will reduce the risk of credit in the economy

Question 5 (5 marks)(1 mark for each point)

Exceptions to the assets from inclusion in the liquidation estate assets: The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—

- (i) **assets owned by a third party** which are in possession of the corporate debtor, including— assets held in trust for any third party;
- (ii) bailment contracts;
- (iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
- (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
- (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) **assets in security collateral held by financial services providers** and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- (c) **personal assets of any shareholder or partner of a corporate debtor** as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;
- (d) **assets of any Indian or foreign subsidiary** of the corporate debtor; or
- (e) **any other assets as may be specified by the Board**, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

Question 6

Power to issue directions [Section 12A of the Securities Contract (Regulation) Act, 1956]: Where the Securities and Exchange Board of India is satisfied after an inquiry, that it is necessary –

- (a) in the interest of investors, or orderly development of securities market; or
- (b) to prevent the affairs of any recognised stock exchange, or, clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market; or
- (c) to secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause (b),

(2 Marks)

It may issue such directions, -

1. to any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or class of persons associated with the securities market; or
2. to any company whose securities are listed or proposed to be listed in a recognised stock exchange, as may be appropriate in the interests of investors in securities and the securities market. Hence, accordingly SEBI may issue such direction to RSE Stock Exchange Ltd. **(1 Mark)**

As per the Explanation given in the section, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made there under, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

So, accordingly the directions can be given to an individual who had made some profit in any transaction in contravention of any provision of the Securities Contracts (Regulation) Act, 1956.

(2 marks)

Question 7

As per Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, read with section 5 of the Foreign Exchange Management Act, 1999 donations exceeding one per cent

of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, can be remitted by persons other than individuals for creation of Chairs in reputed educational institutes with the prior approval of the Reserve Bank of India.

(3 marks)

Considering the above provision-

- a. In the first case, "chair" creation for the department of computer science in reputed university in the U.S. is permissible. **(1 Mark)**
- b. Maximum amount that can be donated for such chair will be one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less without prior approval of the Reserve Bank of India. **(1 Mark)**
- c. In case where donations exceeds one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, it shall require prior approval of Reserve Bank of India. **(1 Mark)**

Question 8

Bonus Issue [Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009]

Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 contains the regulations (Regulations 92 to 95) for issue of bonus shares. Loyal Ltd. can issue bonus shares in the ratio of 1:1 as follows:

1. **Authorization to issue the Bonus shares:** The Articles of Loyal Ltd. must authorize it to issue the bonus shares and capitalization of reserve. If there is no provision in the Articles authorizing the company, firstly, the Articles shall be amended by passing a special resolution. **(2 marks)**
2. **Revision of paid up share capital:** Steps for determining whether any increase in authorised share capital is required:
 - (a) Paid up share capital as on 31st March, 2016: ` 150 crores.
 - (b) Paid up capital (after conversion of ` 100 crores fully convertible debentures, assuming that these debentures shall be converted into share capital of ` 100 crores) ` 250 crores (150+100).
 - (c) Proposed bonus issue - 1 share for every 1 share held.
 - (d) Post bonus issue capital: ` 500 crores (250+250).

Since the Authorised share capital of the company is only ` 400 crores, it has to take steps to increase the amount to ` 500 crores or beyond by complying with the provisions laid down in the Companies Act. **(2 marks)**

3. **Sources of funds:** Reserves and surplus (free reserves built out of the genuine profits can be used for issue of bonus issue): ` 750 Crores. Since the source of issue of bonus shares (` 750 crores) is sufficient to issue bonus shares (` 250 crores), the proposed issue can be made. **(2 marks)**
4. **Other Restriction:** Other restrictions for issue of Bonus shares are as under:
 - (a) A resolution shall be passed by the Board in a duly convened Board meeting.
 - (b) The bonus issue shall be made within 15 days of passing the Board resolution.
 - (c) The bonus issue can be made if there is no default in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal on redemption thereof; and payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus, etc. **(2 marks)**

Question 9

In accordance with the provisions of the Banking Regulation Act, 1949 as contained in section 17, every banking company incorporated in India must create a reserve fund and transfer a sum equal to not less than 20% of its net profits. **(1 mark)**

However, Central Government is empowered to exempt from this requirement on the recommendation of the Reserve Bank of India. Such exemption will be allowed only:

- 1 when the amount in the reserve fund and the share premium account are equal to the paid-up share capital of the banking company. **(1 mark)**
2. When the Central Government feels that its paid-up share capital and reserves are adequate to safeguard the interest of the depositors. **(1 mark)**

If the banking company appropriates any sum from the Reserve Fund or the Share Premium account, it must be reported to Reserve Bank of India within 21 days explaining the circumstances leading to such appropriation. **(1 mark)**

Therefore, applying the above provisions, contention of shareholders shall be tenable since the 15% of transfer of profits to Reserve Fund is lower than statutory limits, as provided in the Act. **(1 mark)**
