J.K. SHAH®
TEST SERIES
Evaluate Learn Succeed

SUGGESTED ANSWERS

CA FINAL

Test Code – JKN-LAW-22

Date – 11-10-2020

Head Office: Shraddha, 3rd Floor, Near Chinai College, Andheri E, Mumbai – 69
Tel: (022) 26836666

Answers

Division A: Multiple Choice Questions

1. Integrated Case Scenario

(1) (b)
(2) (a)
(3) (d)
(4) (a)

2. Integrated Case Scenario

(1) (a)
(2) (c)
(3) (a)
(4) (b)

Multiple choice questions

1. (b)
2. (b)
3. (b)
4. (b)
5. (c)
6. (b)
7. (a)
8. (d)
9. (c)
10. (c)
11. (d)
12. (d)
13. (a)

Division B: Descriptive Questions

Q.1

(a)

The given problem relates to section 196(3) read with Schedule V of the Companies Act, 2013.The given problems are answered as under.

(i) **Appointment of Mr. Ashish as the managing director**

As per section 196(3), a person who has attained the age of 70 years may be appointed as a managing director, whole-time director or manager, if-

(i) such appointment is made by passing a special resolution; and

(ii) the explanatory statement annexed to the notice shall indicate the justification for appointing such person,

Part I of Schedule V also provides that the appointment of a person who has attained the age of 70 years, as a managerial person requires approval by a special resolution.

(2 Marks)

In the given case, Mr. Ashish has completed the age of 70 years. Thus, the conditions required to be fulfilled for appointment of Mr. Ashish as the managing director are as under:

- If Mr. Ashish fulfils all the conditions contained in Part I of Schedule V, no approval of the Central government is required and therefore Mr. Ashish may be appointed as a managing director for 5 years.

  The company shall file a return with the registrar in form No. MR l within 60 days of such appointment.
- If Mr. Ashish does not fulfil one or more of the conditions contained in Part I of Schedule V, he may be appointed as a managing director only with the approval of the Central government.
- Whether or not Mr. Ashish fulfils the conditions contained in Part I of Schedule V, he may be appointed as a managing director since his age is more than 70 years), if-

  (i) his appointment is made by passing a special resolution; and

  (ii) the explanatory statement annexed to the notice indicates the justification for appointing him,

  However, even if no such special resolution is passed, the appointment of Mr. Ashish may be made, if-

  (i) the votes cast in favour of the motion exceed the votes, if any, cast against the motion; and

(ii) the Central government is satisfied, on an application made by the (Board, that such appointment is most beneficial to the company.

(2 Marks)

(ii) Meaning of effective capital

Section IV of Part II of Schedule V defines the term 'effective capital as follows:

Effective capital means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, ewer drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stocks, debentures or other securities), accumulated losses and preliminary expenses not written off,

(1 Mark)

(iii) Maximum permissible remuneration of Mr. Ashish under the Companies Act, 2013

(a) Maximum permissible remuneration as per section 197

If Star Limited has made adequate profits, audit has not employed any whole-time director and manager, then, it can pay a maximum of 5% of net profits of that financial year as the remuneration to Mr. Ashish.

(b) Maximum permissible remuneration as per Section II of Part II of Schedule V

If Star Limited has made no profits or its profits are inadequate, it can pay to Mr. Smart a maximum of `120 Lakhs plus 0.01% of the effective capital in excess of ` 250 crores.

Thus, the maximum remuneration payable to Mr. Ashish can be -

(i) ` 120 lakhs; and

(ii) 0.01 % of `250 crores, ie. ` 2.5 lakh.

Total ` 122.5 lakh.

However, the remuneration in excess of ` 122.5 lakh may be paid if the resolution passed by the shareholders approving the remuneration of Mr. Ashish, is a special resolution.

(2 Marks)

(c) Maximum permissible remuneration as per SectionIII of PartII of Schedule V

It is given that (Star Limited has been making losses continuously during past several years. So, if it is a sick, company, the remuneration payable to Mr. Ashish can exceed the limits specified in Section II of Part II of Schedule V, if-

(i) a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction; and

(ii) the remuneration is paid for a period of 5 years from the date of sanction of scheme of revival or rehabilitation.

(1 Mark)

(b)

As per section 188 of the companies Act, 2013, any contract or arrangement between a company and any related party for sale, purchase or supply of any goods or materials shall require compliance of section 188. Among others, the following are the related parties:

- A firm, in which a director, manager or his relative is a partner.
- A private company in which a director or manager or his relative is a member or director
- A public company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid-up share capital. (2 Marks)

In the given case, all the three parties are related parties. Therefore, following legal requirements are required to be complied with for sale of tea to any of these parties:

1. Audit Committee approval shall also be required in all cases of Related Party Transactions, where such audit committee is constituted
2. Consent of the Board is to be obtained by passing a resolution at a Board Meeting.
3. The agenda of the Board meeting in which the approval of the Board is to be obtained shall contain the particulars prescribed.
4. If any director in interested in such appointment, he shall not be present at the Board meeting during discussions on such appointment.
5. The contract or arrangement shall require the prior approval of the members by an ordinary resolution if the value of the contract or arrangement for sale, purchase or supply of any goods or materials exceeds 10% of the turnover of the company.
6. The explanatory statement annexed to the notice of the general meeting in which the ordinary resolution is to be passed, shall contain the prescribed particulars.

7. If a member is a related party, he shall not vote on such ordinary resolution.
8. Every Related Party Contract shall be referred to in the Board's report to the shareholders.
9. The interested director in the related party transaction under section 188 shall disclose his interest in the Board Meeting as specified in section 184(2).
10. Company shall maintain register in Form MBP 4, and shall enter therein the particulars of contracts or arrangements with a related party under section 188.

(4 Marks)

Q.2

(a)

(i)

As per section 241 read with section 242, for obtaining relief from oppression or mismanagement, an application is required to be made to the Tribunal After due inquiry, the Tribunal may make such order as it may deem fit, if it is of the opinion —

(a) that the affairs of the company have been or are being conducted in a manner -
   (i) prejudicial to public interest;
   (ii) prejudicial or oppressive to the member(s) making such application or any other member(s); or
   (iii) prejudicial to the interests of the company; and
(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up.

(2 Marks)

As is evident from the language used in sections 241 and 242, the acts complained of shall amount to oppression only if such acts have adversely affected a person in his capacity as a member of the company. Such acts which adversely affect a person who is not a member of the company do not amount to oppression, further, where the affairs of a company are conducted in a manner which are prejudicial to a member, but not in his capacity of a member but in any other capacity, it does not amount to oppression. For example, where a person who is a member as well as a director is removed from directorship, there is no oppression, since no wrong is done to any person in his capacity of a member.

Where the majority directors override the minority directors, it does not amount to oppression since there was no wrong done to any person in his capacity as a member

In the present case, the majority directors override the minority directors. This does not amount to oppression in terms of section 241 since no harm or prejudice is caused to

any person in his capacity of a member. Accordingly, in the given case, relief under section 241 is not available. **(2 Marks)**

(ii)

(i) As per section 232, for effecting the amalgamation or reconstruction of two or more companies, an application shad be made to the Tribunal under section 230, and the scheme for amalgamation or reconstruction shall be approved as per the provisions contained in section 230. As per section 230, the scheme is required to be approved by a majority of the members, who are present and voting, and such majority of members must also be the members representing 3/4th in the value of members present and voting at the meeting. In other words, the scheme requires approval of more than 50% of the number of members who hold at least 75% of the value of shares. It is to be noted that members not present in the meeting or present in the meeting but abstaining from voting (viz. remaining neutral) are not to be counted. Voting by proxy shall be permitted, provided a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the company at its registered office not later than 48 hours before the meeting. However, a minor shall not Se appointed as a proxy.

Section 230 uses the expression 'member', which includes a preference shareholder also. As such, the scheme requires the approval of equity shareholders as well as preference shareholders. If a separate meeting of preference shareholders and equity shareholders is ordered, then the scheme shall be approved by preference shareholders and equity shareholders in their separate meetings.

(2 Marks)

(ii) As per section 232, the order of the Tribunal may provide for the dissolution, without winding up, of any transferor company. However, the Tribunal shall not make such an order unless it is satisfied that the procedure and legal requirements as contained in section 232 have been complied with.

(iii) The memorandum of association explains the scope of operations of a company beyond which the company cannot go. Anything done by a company outside the objects clause of memorandum is ultra virus the company.

However, to amalgamate with another company is a power of the company, and not an object of the company. Therefore, no power to amalgamate is required in the memorandum of a company before making an application to the Tribunal for effecting amalgamation. Also, the power to amalgamate has been given by the statute under section 232. Since there is a statutory provision dealing with amalgamation of companies (which does not require that such a provision must

be present in the memorandum or articles of the company), no special power in the objects clause of the memorandum is necessary for its amalgamation with another company. Section 232 is a complete code which gives full jurisdiction to the Tribunal to sanction amalgamation of companies, even though there may be no power in the objects clause of memorandum [Re, EITA India. Ltd, AIR 1997 Cal 208; United Bank of India v United India Credit & development Co. Ltd. (1977) 47 Comp Cos 689, 730(Cal)]

(2 Marks)

(b)

(i)

Approval to the following transactions under FEMA, 1999:

(1) Foreign Exchange drawals for cultural tours require prior permission / approval of the Government of India irrespective of the amount of foreign exchange required. Therefore, in the given case Sunny is required to seek permission of the Government of India.

(1 Mark)

(2) Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses in connection with medical treatment abroad, shall require prior approval of the Reserve Bank of India. Therefore, Mr. Bimar can draw foreign exchange up to the USD 2,50,000 and for additional remittance in excess of this limit for bearing the expenses of medical treatment in UK, prior permission / approval of RBI will be required. Provided, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalised Remittance Scheme if it is so estimated by a medical institute offering treatment.

(2 Marks)

(b)

(ii)

Legal provisions

As per section 212(6) of the companies act, 2013, the offences covered under section 447 of this Act shall be cognizable and no person accused of any such offence 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 Special 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.

However, 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 Special Court so directs.

The Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by -

(i) the Director, Serious Fraud Investigation Office; or

(ii) Any officer of the Central Government authorised, by a general or special order in writing in this behalf by the Central Government.

(2 Marks)

Fact & Conclusion

In the given case, Mrs. Sheela has been arrested for an offence covered under section 447. So, she can be released on bail in accordance with the provisions contained in section 212(6). Since Mrs. Sheela is a woman, she may be released on bail if the Special Court so directs, i.e. the Special Court has the discretion to grant bail to Mrs. Sheela even without providing any opportunity to the public prosecutor to oppose the bail application.

(1 Marks)

Q.3

(a)

(i)

Legal provision

clause (26) of section 2 define contributory as a person liable to contribute towards the assets of the company in the event of its being wound up. A person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory.

As per section 285, a person, who is not a member, but has been a member in the past, shall also 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 however a past member shall not be liable to contribute if he has ceased to be a member for 1 year or more before the commencement of the winding up.

(2 Marks)

Facts and conclusion

In the given case, Mr. Akshay ceased to be a member of Tahir Limited with effect from 1st June, 2017 and the wound up of Tahir Limited done on 15th March, 2018.

Since on the date of wound up, one year has not elapsed since Mr. Akshay ceased to be a member, and therefore, he shall be termed as a contributory, since a sum of ` 5,000 is due and remains unpaid on the shares previously held by him and so he is liable to contribute to the assets of the company in the event of winding up of the company.

Mr. Akshay is liable in the capacity of a past member not more than the amount remaining unpaid on the shares held by him, i.e. ` 5,000, being the unpaid calls on shares previously held by him.

(1 Mark)

(ii)

(Relevant section 15 of SARFAESI Act, 2002)

- When the management of business of a borrower is taken over by a secured creditor, the new directors or administrator appointed by secured creditors shall alone be entitled to exercise all powers of superintendence. direction and control of business of borrower.

(1 Mark)

- Existing directors or authorized person of borrower shall cease to hold office and following consequence will follow:

(a) It shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director or the company:

(b) no resolution passed at any meeting of the shareholders of such company shall he given effect to unless approved by the secured creditor;

(c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall he in any court, except with the consent of the secured creditor.

In view of above provisions, All Resolutions passed by the Board of Directors and the Shareholders are not valid.

Provisions of SARFAESI Act are not applicable to unsecured creditors, hence unsecured creditor does not have recourse to this Act.

(3 Marks)

(b)

(i)

(Section 63, section 69 of PMLA, 2002)

- Any person willfully and maliciously giving false information be liable for imprisonment for a term which may extend to 2 years or with fine which may extend to ` 50,000/- or both. If any person, refuses to give evidence and to sign statement made by him in the course of proceedings, he shall pay, by way of penalty, 3 sum which shall not be less than ` 500/- but which may extend to ` 10,000/- for each such default or failure. No order under this section shall be passed by an authority, unless the person, on whom the penalty is proposed to be imposed, is given an opportunity of being heard in the matter by such authority.

(2 Marks)

- Where any fine imposed on any person is not paid within 6 months, the Director may proceed to recover the amount from the said for the recovery of arrears and he or any officer authorized by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

(1 Marks)

(b)

(ii)

Legal provision

As per section 218(1), if during the pendency of any investigation under section 210, 213, 219, 216 or 212 or during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter XVI, Such company, other body corporate or person proposes-

(i) to discharge or suspend any employee; or

(ii) to punish him, whether by dismissal, removal, reduction in rank or otherwise; or

(iii) to change the terms of employment to his disadvantage,

The company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.

Section 218(2) states that If the company, other body corporate or person concerned does not receive within thirty days of making of application under sub-section (1), the approval of the Tribunal, then and only then, the company, other body corporate or person concerned may proceed to take against the employee, the action proposed.

(2 Marks)

Facts

In the given case, the company made an application to the Tribunal on 3rd January, 2017, but the company has not received any objection of the Tribunal within 30 days (viz. upto 2nd February, 2017). Therefore, the company may take any action like dismissal or suspension of the employee on or after 3rd February, 2017.

(1 Mark)

Conclusion

The suspension of Mr. Z, the CFO of the company, on 15th February, 2017 is in accordance with the provisions of section 218 of the Companies Act, 2013, and is therefore, valid.

(1 Mark)

Q.4

(a)

(i)

- To impose penalty, SEBI should hold an inquiry. SEBI shall appoint any of its officers not below the rank of Division Chief to be an adjudicating authority.
- A reasonable opportunity of being heard is given before imposing any penalty.
- While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person to give evidence or to produce any document and if, on such inquiry, he is satisfied that the person has failed to comply with any of the provisions, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.
- Board has power to enhance the quantum of punishment on consideration of erroneous order passed by adjudicating officer, if it is not in the interest of security market. Before passing an order opportunity of being heard shall be given.

(2 Marks)

Following factors are to be taken into consideration by the adjudicating officer while deciding amount of penalty

- The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.
- The amount of loss caused to an investor or group at investors as a result of the default.

- The repetitive nature of the default.
- No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, except on a complaint made by SEBI.

Penalty:

A registered stock broker fails to deliver any security or fails to make payment of the amount due to the investor, the penalty may extend to ` 1 lakh per day or upto ` 1 crore , whichever is less.

(1 Mark)

(ii)

(Relevant Sec 8A of SCRA, 1956)

(i) Purpose

A recognized stock exchange may, with the prior approval of SEBI, transfer the duties and functions of a clearing house to a clearing corporation being a company incorporated under the Companies Act, 1956, for the purpose of-

- the periodical settlement of contracts and differences thereunder,
- the delivery of and payment for securities,
- any other matter incidental to, or connected with, such transfer.

(1 Mark)

(i) Procedure

- Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation, make byelaws and submit the same to SEBI for its approval.
- SEBI may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws and approve the transfer of the duties and functions of a clearing house to a clearing corporation.

(2 Marks)

(b)

(i)

i. Under section 14, a Certificate of registration can be cancelled for following reason:

- If holder has furnished false information.
- If holder has violated its terms and conditions or provisions of Act.

- It is necessary in public interest.
- If holder has not renewed it.
- If holder has not been engaged in any reasonable activity for two consecutive years or has become defunct.

(1 Mark)

ii. The Certificate cannot be cancelled without giving opportunity of being heard.

iii. Such person cannot apply for registration or prior permission for next 3 years from date of cancellation.

(1 Mark)

(b)

(ii)

Liquidation estate: As per section 36 of the Code, for the purposes of liquidation, the liquidator shall form an estate of the assets, which will be called the liquidation estate in relation to the corporate debtor.

Liquidation estate shall comprise all liquidation estate assets which shall include the following :-

(a) any assets over which the corporate debtor has ownership rights, including shares held in any subsidiary of the corporate debtor;

(b) assets that may or may not be in possession of the corporate debtor

(c) tangible assets,

(d) intangible assets;

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised

(3 Marks)

Exemptions 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:-

(a) assets owned by a third party which are in possession of the corporate debtor, including-

  (i) 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;

(c) personal assets of any shareholder or partner of a corporate debtor except that such assets are not held on account of avoidance transactions that may be avoided;

(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.

(3 Marks)

Q.5

(a)

(i)

Section 168 of the Companies Act, 2013 lays down the provisions with respect to resignation of directors. As per section 168, a director who resigns may, within 30 days of resignation, forward to the Registrar, a copy of his resignation in form No. DIR 11 along with detailed reasons for the resignation. Also, section 168 casts a duty on the company to intimate the (Registrar regarding the resignation by a director. Such intimation shall be given by the company to the registrar in form No.DIR:12 within 30 days of receipt of resignation from the director.

Section 168 does not require that the resignation of a director is to be accepted by the Board of directors or any other person or authority. Also, section 168 does not grant any right to the managing director or to the (Board of directors to refuse the resignation of a director. Section 168 expressly provides that the resignation of a director shad take effect from the date on which the notice is received by the company or the date, if any, specified 6y the director in the notice, whichever is later.

(2 Mark)

The effective date of resignation is not related to the date of field of form no. DIR 11 or form No. DIR 12. Filing of form no. DIR 11 or DIR 12 are only consequential acts;

filing is not an act to he complied with in order to make a resignation effective. Even if no form is field with the registrar, the resignation shad take effect from -

(a) the date on which the notice of resignation is received by the company;

or

(b) the date, if any, specified in the notice of resignation,

whichever is later.

Assuming that the notice of resignation of Mr. Raj did not specify any date with effect from which the resignation shad take effect, Mr. Raj shad cease to be a director with effect from 30th June, 2014, ie. the date on which the notice of resignation is received by the company.

(2 Marks)

(ii)

1. Writing - unlike the possibility of an oral contract, arbitration agreement are required to be mandatorily in writing. There is however no requirement for the same to be in writing in one document. There is also no particular form or template for an arbitration agreement.
2. Clarity of consent: the intention to go to arbitration must be clear in other words there must be consensus ad idem. Utilization of vague words cannot be considered to be adequate. The intention has to be gathered from the wordings of the agreement. The words used should disclose a determination and obligation on the part of parties to go to arbitration and not merely contemplate the possibility of going for arbitration. If it is only a possibility then it is not an arbitration agreement.
3. Defined Legal relationship - this term has been borrowed from the UNCITRAL Model Law. The statute does not define this term. The important idea here is that any dispute that arises from a legal relationship can be submitted to arbitration unless it is expressly or impliedly barred by a Statute.Thus disputes concerning illegal activities cannot be submitted to arbitration.
4. Final and binding award: Parties to the arbitration agreement must agree that the determination of their substantive rights by a neutral third person acting as the arbitral tribunal would be final and binding upon them.
5. Specific words: the mere use of words like ‘arbitration’ or ‘arbitrator’ in a clause will not make it an arbitration agreement. Usage of such words is not a necessary requirement.12
6. Dispute: there must be a present or a future dispute/difference in connection with some contemplated affairs that is proposed to be submitted to arbitration.

7. Arbitrability: the disputes submitted/ proposed to be submitted to arbitration must bearbitrable.13 In other words that law must permit arbitration in that matter. There are certain disputes that the law retains exclusively for the court, and the same cannot be submitted for arbitration. The rationale is that given the nature of disputes, the courts are the only appropriate forum for adjudicating the matter.
8. Signature: is only required when the arbitration agreement is contained in a contract i.e. in one set of documents. However no signature is required if the arbitration agreement is contained in correspondence or exchange of pleadings.

(Every 2 Point Contain 1 Mark)

(b)

(i)

As per section 439(2), no court shall take cognizance of any offence under this Act, which is alleged to have been committed by any company or any officer thereof except on the complaint in writing made by

- the Registrar,
- a shareholder of the company;
- a person authorised by the Central government in that behalf;
- 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(2) has filed any complaint with the Court. On the basis of 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.

(ii)

As per section 389 of the companies Act, 2013

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there

is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

(2 Marks)

Documents to be annexed to prospectus as per Rule 11 of the Companies (Registration of Foreign Companies) Rules, 2014:

(a) Any consent to the issue of the prospectus required from any person as an expert.
(b) A copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof.
(c) A copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years.
(d) A copy of underwriting agreement.
(e) A copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

(2 Marks)

Q.6

(a)

"Non-performing Asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or under guidelines relating to asset classifications issued by the Reserve Bank.

(2 Marks)

"Asset reconstruction" means acquisition by any securitization company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realization of such financial assistance.

(2 Marks)

FINANCIAL ASSETS: Financial assets are as under -

- A claim to any debt or receivables, whether secured or unsecured.
- Any debt or receivables secured by, mortgage on, immovable property.
- A mortgage, charge, hypothecation or pledge of movable property.
- Any right or interest in the security underlying such debt or receivables.
- Any beneficial interest in property, whether movable or immovable, or in such debts, receivables, whether such interest isexisting, future, accruing, conditional or contingent.
- Any financial assistance.

(2 Marks)

(b)

Eligibility for registered valuers

(1) A person shall be eligible to be a registered valuer if he-

(a) is a valuer member of a registered valuers organisation;

Explanation- For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;

(b) is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;

(c) has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;

(d) possesses the qualifications and experience as specified in rule 4;

(e) is not a minor;

(f) has not been declared to be of unsound mind;

(g) is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;

(h) is a person resident in India;

Explanation- For the purposes of these rules 'person resident in India' shall have the same meaning as defined inclause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual;

(i) has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

(j) has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and

(k) is a fit and proper person:

Explanation- For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

(i) integrity, reputation and character,

(ii) absence of convictions and restraint orders, and

(iii) competence and financial solvency. **(3 Marks)**

(2) No partnership entity or company shall be eligible to be a registered valuer if-

(a) it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is not a subsidiary, joint venture or associate of another company or body corporate;

(b) it is undergoing an insolvency resolution or is an undischarged bankrupt;

(c) all the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e),(f) (g), (h), (i), (j) and (k) of sub-rule (1);

(d) three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or

(e) none of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

(2 Marks)

Qualifications and experience

An individual shall have the following qualifications and experience to be eligible forregistration under rule 3, namely:-

(a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or

(b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or

(c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership and having qualification mentioned at clause (a) or (b).

Explanation I- For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

Explanation II- Qualifying education and experience and examination or training for various asset classes, is given in an indicative manner in Annexure-IV of these rules.

Explanation III- For the purposes of this rule and Annexure IV, 'equivalent' shall mean professional and technical qualifications which are recognised by the Ministry of Human Resources and Development as equivalent to professional and technical degree. **(3 Marks)**