

MOCK TEST PAPER – 2
FINAL (NEW) COURSE: GROUP I
PAPER 4: CORPORATE AND ECONOMIC LAWS
SUGGESTED ANSWERS/HINTS

1. (a) (i) **Political Contribution:** As per section 182, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.

Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the financial year to which the account relates.

In the given case BoD of Srajan Ltd. proposed political contribution of 1 Lac for the financial year 2017-2018. As per the above provision, any amount can be contributed by Srajan Ltd. through the resolution passed at a meeting of the Board of Directors authorising the making of such contribution. Such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it. So, the political contribution proposed is well within the powers of the Board. Such a proposal shall be passed at a meeting through the resolution authorising such contribution and full disclosure of the name of political party and amount contributed shall be made in the profit and loss account.

- (ii) **Charitable Contribution:** As per the facts, the Board of Directors of Srajan Ltd., proposed to donate Rs. 2,00,000 to a school established exclusively for the benefit of the employees of the company. As per section 181 of the Companies Act, 2013, the Board of Directors of a company may contribute to bona fide charitable and other funds. A contribution by a company is said to be charitable contribution if it is made without any object of availing any benefit for the company or for its employees and such contribution does not have any direct relation with the business of the company.

Since, here the contribution proposed is for the school which is exclusively for the benefit of the employees' children. Therefore, it cannot be considered as charitable within the meaning of section 181.

- (b) Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider
- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or
 - (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law, or
 - (iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. P. The maximum penalty that SEBI can impose is Rupees

twenty-five crores or three times the amount of profits made out of insider trading, whichever is higher.

- (c) (i) Section 25 of the Prevention of Money Laundering Act, 2002 empowers the Central Government to establish an Appellate Tribunal to hear appeal against order of the Adjudicating Authority and other authorities under the Act.

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. Any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal within a period of 45 days from the date on which a copy of the order is received by him. 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.

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.

- (ii) In accordance with the provisions contained under section 45 of the Prevention of Money Laundering Act, 2002, the offences under the Act shall be cognizable and non-bailable. In case of a minor person who is an accused of an offence punishable for a term of imprisonment of more than 3 years under Part A of the Schedule shall be released by the Special Court on bail.

2. (a) An order under section 232 of the Companies Act, 2013 transferring the property, rights and liabilities of one company to another does not automatically transfer contracts of personal service, which are in their nature, incapable of being transferred and no contract of service is thereby created between an employee of the transferor company on the one hand and the transferee company on the other.

In compliance with section 232(1) and (2), the tribunal may by order make a provision for the transfer of the employees of the transferor company and the transferee company. And provisions shall also be made for any persons who dissent from the compromise or arrangement scheme.

According to the above provisions, the workers/employees and their services cannot be transferred without their consent. Tribunal may by order safeguard the interest of the employees/ workers. Therefore, the workers of ABC Ltd. (Transferor) will succeed against XYZ Ltd.

- (b) According to section 226 of the Companies Act, 2013, an investigation may be initiated and no such investigation shall be stopped or suspended by reason only of, the fact that—

- (i) an application has been made under section 241;
- (ii) the company has passed a special resolution for voluntary winding up; or
- (iii) any other proceeding for the winding up of the company is pending before the Tribunal.

In the instant case Origin Paper Ltd. has been incurring business losses for past couple of years. The company passed a special resolution for voluntary winding up. Meanwhile complaints were made to the Tribunal and to the Central Government about foul play of the directors of the company, which adversely affected the interests of shareholders of the company as well as the public.

As the company has passed a special resolution for voluntary winding up of the company, then also the investigation may be initiated against the company under section 226 of the Companies Act, 2013.

Yes, as per the above provision, though investigation was initiated against the company, it shall not bar members to file an application to Tribunal for Relief under section 241 of the companies Act, 2013.

According to the said section, any member of a company may apply to the Tribunal for an order on the complains that—

- (1) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or
- (2) the material change taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order.

Where any members of a company are entitled to make an application, any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

- (c) **Appeal against acquittal:** According to section 444 of the Companies Act, 2013, the Central Government may, in any case arising under this Act, direct –
- (i) any company prosecutor, or
 - (ii) authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court.

Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

- (d) Section 6 of the Foreign Contribution (Regulation) Act, 2010 prescribes that no member of a Legislature shall while visiting any country accept, except with the prior permission of the Central Government for any foreign hospitality. Foreign Hospitality [as per section 2(m)] means any offer not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country with free boarding lodging or medical treatment. Therefore, prior approval is required from Central Government for the medical expenses. Provided that it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which and the manner in which such hospitality was received by him.

As per Rule 7 of *Foreign Contribution (Regulation) 2011*, foreign hospitality may be received by member of Legislature in the following manner.

In case of emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within sixty days of such receipt giving full details including the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilized.

Hence, Mr. Peter has to follow the above procedure.

3. (a) As per section 208 of the Companies Act, 2013, the Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

Therefore, the registrar is authorised to submit in its report after conduct of inspection of the book of accounts, the recommendation for further investigation into the affairs of the company.

- (b) The provisions related to the Dormant companies is covered under section 455 of the Companies Act, 2013. According to provisions -
1. a company is formed and registered under this Act for the purpose of a future project or to hold an asset or intellectual property and has no significant accounting transaction.
 2. Such company or 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.
 3. The Registrar shall allow the status of a dormant company to the applicant and issue a certificate after considering application.
 4. The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Register shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. However, 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 this section.

Thus, JKL Research Development Limited may follow the above procedure to obtain the status of a 'Dormant Company'.

- (c) As per section 23A(a) of the Securities Contract (Regulation) Act, 1956, if any person fails to furnish any information, document, books, returns or report to a recognised stock exchange within the time specified in the listing agreement or conditions or bye-laws of the stock exchange, he shall be punishable with a fine of at least one lakh rupees which may extend to one lakh rupees per day during which such failure continues, subject to a maximum of one crore rupees. Thus, Jaipur Stock Exchange shall be liable to the afore-mentioned penalty under section 23A(a) of the Act.
- (d) (A) **Remittance of Foreign Exchange for studies abroad:** Foreign exchange may be released for studies abroad up to a limit of US \$ 2,50,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case since US \$ 1,20,000 is the drawal of foreign exchange, so permission of the RBI is not required.
- (B) **Gift remittance exceeding US \$ 10,000:** Under the provisions of Section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US \$ 2,50,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, so there is no need for any permission from the RBI.

4. (a) (i) As per the given facts, Mr. Khurana, a director of XYZ Ltd., was also a member of a private company with which he entered into contract for the purchase of the raw material. In terms of section 2(76) of the Companies Act, 2013, XYZ Ltd. is a related party to a such private company. However, 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 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, XYZ, Public Ltd. has turnover of Rs. 500 crore, here the transaction is amounting to more than 10% of the turnover i.e., $500 \text{ cr} \times 10/100 = 50 \text{ cr}$, but without seeking prior approval of the company by a resolution.

So, in terms of the above provision, this contract is of voidable nature at the option of the Board, or as the case may of the shareholders according to section 188(3) of the Companies Act, 2013.

- (ii) **In case of contravention of Section 188(1):** Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting as required under section 186(1), and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within 3 months from the date on which such contract or arrangement was entered into. Further, 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.

Company may proceed to recover loss in contravention of the provisions of this section: 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 under Section 164:** 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, he was not convicted, only levied with the penalty, against the offence dealt with related party transactions under section 188, so he eligible and can be appointed as a director in the PQR Ltd.

- (b) (i) 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. R is advised that the complaint against the erring stock broker may be submitted to SEBI.

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.
- (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.
- (c) Any collection of charges by way of brokerage which is in excess of the brokerage specified in the regulations.

- (c) **Cancellation of Certificate of Registration under SARFAESI Act, 2002:** The Reserve Bank of India may cancel a certificate of registration granted to a securitisation and reconstruction company for the reasons stated in Section 4 of the SARFAESI Act, 2002.

RST Ltd., can prefer an appeal to the Central Government (Secretary, Ministry of Finance, Government of India) within a period of 30 days from the date on which order of cancellation was communicated to it. The Central Government must also give such company a reasonable opportunity of being heard before rejecting the appeal. If RST Ltd., is holding investments of qualified institutional buyers at the time of cancellation of certificate of registration, it shall be deemed to be a securitisation and reconstruction company until it repays the entire investments held by it, together with interest if any, within such period as may be specified by the Reserve Bank.

- (d) Section 12 of the Code states that any Corporate Insolvency Resolution Process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate the process.

However the National Company Law Tribunal (NCLT) may on an application made by the resolution professional, under a resolution passed by the Committee of Creditors, by a vote of 75% of voting shares, after consideration provide one extension which shall not extend more than 90 days.

5. (a) Section 197 of the companies provides a way to pay managerial remuneration in case of company's having adequate profits. As per the section, the total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 of the Companies Act, 2013.

In case where there is any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together.

Moreover, any remuneration for services rendered by any such director which are of a professional nature shall not be included in the managerial remuneration. Further, a director may receive remuneration by way of a fee for each meeting of the board, or a committee thereof attended by him.

As per the facts given in the questions, following are the answers :

- (i) Commission at the rate of 5% P.A to Mr. X its Managing Director can be paid as per the provisions of the Companies Act, 2013.

- (ii) To other directors a monthly fixed remuneration of Rs. 60,000 along with a commission of 1% on net profits of the company with a limit that maximum remuneration per director shall not exceed 2% of net profits. This remuneration can be paid if this remuneration along with the remuneration paid above does not exceed the maximum limit of managerial remuneration of 11% under the Act.
- (iii) Additional remuneration paid to Mr. Careful for professional services rendered by him. This remuneration can be paid by the company as it is outside the purview of managerial remuneration.

Here as per the fact, it is assumed that the company is earning profits and hence is paying remuneration to its managerial personnel under section 197 of the Act.

- (b) (i) (a) As per section 581 Y of the Companies Act, 1956, unless the Articles requires a larger number, one fourth of the total number of members of the producer company shall be the quorum at a general meeting. In this case, the company has got 100 members and hence, the quorum is 25.
- (b) (i) (b) Section 581 V of the Companies Act, 1956, provides that the quorum for a meeting of the Board shall be one third of the total strength of directors, subject to a minimum of three.

In the given case, 1/3 of 6 directors comes to 2, but minimum required is 3, hence, the quorum will be 3 directors for a board meeting.

- (ii) **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 LED Bulb Ltd. 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, 2018.

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.

- (c) As per section 53 of the Insolvency and Bankruptcy Code, 2016, the proceeds from the sale of liquidation assets shall be distributed in the following order of priority:

Insolvency Resolution Process Cost and Liquidation cost to be paid in full

(i)	Fees payable to Resolution Professional in full	75,000
(ii)	Expenses incurred by the Resolution professional in running the business on going concern	25,000
(iii)	Workmen salary outstanding for a period of 24 months (proportionate to 24 months only). The balance Rs. 60,000 is considered as remaining debts and dues and will be settled before preference shareholder/equity shareholder.	2,40,000
(iv)	Secured creditor who has relinquished the security	5,00,000
(v)	Unsecured Financial Creditors	4,00,000
(vi)	Income- tax payable with in the period 2 years	50,000
(vii)	Cess to State Government payable with in a period of one year	20,000
(vii)	Balance amount in workmen salary	60,000
	Total distribution in the above priority	13,70,000
	Amount realized from the sale of liquidation of assets	14,00,000
	Balance available to Equity share holder on pro rata basis	30,000

6. (a) Notice of Board meeting

Section 173(3) of the Companies Act, 2013 makes it mandatory for every director to be given proper notice of every board meeting. It is immaterial whether a director is interested or not.

- (a) An Interested Director: Notice must be given to a director even though he is precluded from voting at the meeting on the business to be transacted.
- (b) A director who has gone abroad: A director who has gone abroad is still a director. Therefore, he is entitled to receive notice of board meetings during his stay abroad.

The Companies Act, 2013, allows delivery of notice of meeting by electronic means also. This is important because the Companies Act, 2013 permits a director to participate in a meeting by video conferencing or any other audio visual means.

- (b) **Relief under Section 463:** Under section 463(1) of the Companies Act, 2013 if in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such terms, as it may think fit.

Provided that in a criminal proceeding under this sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

In the given case, the offence is not compoundable i.e. it carries imprisonment as a punishment either alone or with a fine. In either case, it would indicate that a criminal liability is indicated. Hence, the court will not have the power to grant relief under section 463. However, the nature of the offence will have to be examined.

- (c) According to Section 417(1) of the Companies Act, 2013, the Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who—
 - (a) has been adjudged an insolvent; or
 - (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
 - (c) has become physically or mentally incapable of acting as such President, the Chairperson, or Member; or
 - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member; or
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (b) to (e) without giving him a reasonable opportunity of being heard.

As per the proviso stated above, in case of sub-clause (a), i.e. where there is a case of insolvency, there is no requirement of giving an opportunity of being heard by the member of the NCLAT. Hence, the action taken by the Central Government against PRTJ is valid.

Circumstances under which the Central government can remove the President, the Chairperson etc.,

According to Section 417(2) of the Companies Act, 2013, the President, the Chairperson or the Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central

Government in which such President, the Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard.

In the instant case, it is advised that the decision of the Central Government to remove (without giving reasonable opportunity of being heard) Mr. PRTJ, member of NCLAT who was adjudged as an insolvent by a competent authority is appropriate as per the clause (a) of Section 417(1) of the Companies Act, 2013.

- (d) The term “current account transaction” is defined in section 2(j) of Foreign Exchange Management Act, 1999. It means a transaction other than a capital account transaction and includes:
- (i) payments due in connection with foreign trade, other current business, services, and short – term banking and credit facilities in the ordinary course of business.
 - (ii) payments due as interest on loans and as net income from investments.
 - (iii) remittances for living expenses of parents, spouse and children residing abroad and
 - (iv) expenses in connection with foreign travel education and medical care of parents, spouse and children.

According to Section 5 of FEMA, 1999 any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction. Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Further, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction subject to the provisions of section 6(2).

(e) **Differences**

Litigation	Arbitration
Takes place in court	The place of arbitration is chosen by the parties.
A judge is assigned by the court. The litigants have no say on who will judge their disputes.	The arbitrator(s) is selected by the parties. Parties therefore are able to choose people with the appropriate expertise, educational qualifications, trade experience, etc., as arbitrators.
The procedure followed by the court is fixed and determined by the Rules of the court. In India it would be governed by the Code of Civil procedure and rules applicable to the particular court.	The parties have adequate flexibility to choose the procedures that would apply to their arbitration. They could either construct such procedures or adopt procedures of an arbitral institution.
The proceedings are generally open to public. In other words there is very little privacy and confidentiality.	Confidentiality is one of the most important characteristic of arbitration. In other words apart from the parties (including their lawyers) no other person is permitted to participate in the arbitral proceedings.
Court decisions are subject to numerous appeals.	Arbitral awards can be challenged on very limited grounds.
It is often difficult to enforce judgments of court of one country in a foreign country.	Enforcing an arbitral award in foreign nations is much easier and is governed by international treaties such as The Recognition and Enforcement of Foreign Arbitral Awards, 1958.