MOCK TEST PAPER – 1

FINAL (NEW) COURSE: GROUP I

PAPER 4: CORPORATE AND ECONOMIC LAWS

SUGGESTED ANSWERS/HINTS

1. (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 cr x10/100 = 50 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 188(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, Mr. Khurana 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) Rule 8 of the Securities Contract (Regulation) Rules, 1957 deals with the qualification for membership of a recognised stock exchange when one can be admitted as the members of the recognised stock exchange.

According to the Rule 8(2), no person eligible for admission as a member under Rule 8(1) shall be admitted as a member unless he succeeds to the established business of a deceased or retiring member who is his father, uncle, brother or any other person who is, in the opinion of the governing body, a close relative.

Provided that the rules of the stock exchange may authorise the governing body to waive compliance with any of the foregoing conditions if the person seeking admission is in respect of means, position, integrity, knowledge and experience of business in securities, considered by the governing body to be otherwise qualified for membership.

Since in the given case, though Mr. G was brother of Mr. Kumar, but was not eligible due to lack of his experience and knowledge in the business of securities.

(ii) According to the provisions of section 11 of the Securities Contracts (Regulation) Act, 1956, where the Central Government is of opinion that the governing body of any recognized stock exchange should be superseded, the Central Government may serve on the governing body a written notice that the Central Government is considering the supersession of the governing body for the reasons specified in the notice. After giving an opportunity to the governing body of such Stock Exchange to be heard in the matter, the Central Government may, by notification in the Official Gazette, declare the governing body of such Stock Exchange to be superseded.

The Central Government may appoint any person or persons to exercise and perform all the powers and duties of the governing body.

(c) (i) As per the Prevention of Money Laundering Act, 2002, whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering (Section 3).

"Proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [Section 2(1)(u)].

Every Scheduled Offence is a Predicate Offence. The occurrence of the scheduled Offence is a pre requisite for initiating investigation into the offence of money laundering.

In the given case, Mr. X assigned Ali to deliver counterfeit currency notes to be given to his friends in Hongkong, which is an offence falling within the purview of scheduled offence in Part A of the PMLA, 2002 under section 489B of the IPC. This section deals with the using as genuine, forged or counterfeit currency-notes or bank-notes. According to the section whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be liable under the Prevention of Money Laundering Act.

Hence, Ali, Mr. X and his friends in Hongkong, all are said to be liable under the Prevention of Money Laundering Act.

(ii) Section 45 of the Prevention of Money Laundering Act, 2002, provides of the offences that are cognizable and non-bailable. According to which, person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall not be released on bail or on his own bond except on the conditions stated therein the said section.

Given instance as to the commission of an offence, is out of the purview of the predicate offence as given in the Schedule under the PMLA, 2002. Ms. Farida shall be liable for personating herself as a public servant in other law but will not be liable for arrest under the PMLA.

2. (a) As per the given instance, the act of JIPL to remove Mr. B Dutt, a Managing director from FPRPL and pressurizing him to sell his shares much below the fair market price is an act of oppression and violations of Section 241and 242 of the Companies Act,2013. Mr. B Dutt was not given prior notice of board meeting and no chance to disprove the false allegations made against him.

According to Section 242(2) the Tribunal Without prejudice to the generality of the powers under sub-section (1) can order for -

a. the regulation of conduct of affairs of the company in future;

b. the purchase of shares or interests of any members of the company by other members thereof or by the company;

c. in the case of a purchase of its shares by the company, the consequent reduction of its share capital;

d. restrictions on the transfer or allotment of the shares of the company;

e. the termination, setting aside or modification, of any agreement entered between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

f. the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

g. the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

h. removal of the managing director, manager or any of the directors of the company;

i. recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

j. the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

k. appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

l. imposition of costs as may be deemed fit by the Tribunal;

m. Any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

The above mentioned case, falls within the purview of the Section 241 and 242 of the Companies Act 2013, ensuring that the transfer of shares to the company (JIPL) by the member will not effect

to the interests of the company or any of its shareholders. It gives broad powers to the Tribunal, leading to the establishment of its jurisdiction, even when a separate JVA exist.

Under Section 242(2) of the Companies Act, 2013, the Tribunal can pass an order for purchase of shares/interest of any members of the company by other members thereof or by the company if it thinks fit. Mr. B. Dutt can be reappointed by Tribunal as the Managing director of the company and it can also issue orders for the future conduct of the company along with provision of just and equitable relief to the applicant (i.e. Mr. B Dutt).

(b) (i) Right to apply for oppression and mismanagement: As per the provisions of Section 244 of the Companies Act, 2013, in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:

100 members; or

1/10th of the total number of members; or

Members holding not less than 1/10th of the issued share capital of the company.

The share holding pattern of MNC Limited is given as follows:

Rs. 5,00,00,000 equity share capital held by 500 members

The petition alleging oppression and mismanagement has been made by some members as follows:

(1) No. of members making the petition – 80

(2) Amount of share capital held by members making the petition – Rs. 10,00,000

The petition shall be valid if it has been made by the lowest of the following:

100 members; or

50 members (being $1/10^{th}$ of 500); or

Members holding Rs. 50,00,000 share capital (being $1/10^{th}$ of Rs. 5,00,00,000)

As it is evident, the petition made by 80 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 50 members in this case. Therefore, the petition is maintainable.

(ii) Further section 221 of the Companies Act, 2013 states that where it appears to the Tribunal, on any complaint made by such number of members as specified under sub-section (1) of section 244 having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

In case of contravention of order of Tribunal, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(c) When at the commencement of, or in the course of, a summary trial, it appears to the Special Court that –

- the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed, or that it is, for any other reason, undesirable to try the case summarily,

- the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.

(d) As per the requirements of a valid arbitration agreement, 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.

Since in the given case, the arbitration agreement formed by the XYZ Pvt. Ltd. contained a clause that any questions, claim right, matter, thing, whatsoever, in any way arising out of or relating to the contract designs, drawings, specifications estimates, instructions, or orders, or those conditions or failure to execute the same whether arising during the progress of' the work, or after the completion, termination or abandonment thereof, the dispute shall, firstly, be referred to the Chief Engineer , Mr. Builder. He will has jurisdiction over the work specified in the contract. He shall within a period of ninety days from the date of dispute bought into notice, give written notice of his decision to the contractor. Chief Engineer's decision shall be final and binding on both the parties.

Here Chief Engineer is not a neutral party and has a Control over the work specified in the contract, so this is not a valid arbitration agreement.

3. (a) Section 230 of the Companies Act, 2013 deals with the powers of the Tribunal on the filing of application for the compromise or arrangement. According to the contract, where a compromise or arrangement is proposed between a company and its creditors or any class of them; or a company and its members or any class of them, the Tribunal may, on the application of the company, creditor, member of the company, or liquidator, may order a meeting of the creditors/class of creditors, or of the members/class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs. Where a meeting is proposed to be called in pursuance of an order of the Tribunal, a notice of such meeting shall be sent.

Further section 230(4) provides that a notice shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice.

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent of the shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement.

Where, at a meeting held, majority representing three-fourths in value of the creditors/class of creditors, or of the members/class of members, as the case may be, 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 same shall be binding on the company, all the creditors/class of creditors, or of the members/class of members, as the case may be, or, in case of a company being wound up, on the liquidator, "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, "and the contributories of the company.

(b) As per section 248 of the Companies Act, 2013, the name of the companies can be removed from the register of companies either by registrar or through an application of the company by itself on the ground as mentioned here-

(a) a company has failed to commence its business within one year of its incorporation, or;

(b) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

Further section 249 of the Companies Act, 2013 marks certain restrictions on the filing of an application under section 248. Accordingly, an application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, if the company—

(a) has changed its name or shifted its registered office from one State to another;

(b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

As per the given fact, failure of commencement of business by Rudraksh Ltd. within one year of incorporation was a reasonable ground for the filing of an application for the removal of its name from the register of companies. However, section 249 puts a restriction on the application of section 148 on the basis of grounds given in the said section. According to the stated ground, that if the company has made an application to the Tribunal at any time in the previous three months from an application filed under section 248, for the sanctioning of a compromise or arrangement scheme and the matter has not been finally concluded, there in such case, that respective company cannot file application.

Here in the given stance, Rudraksh Ltd. filed a application to the tribunal in April, 2018 for the proposed merger scheme of the company with the Shri Narayan Ltd. Whereas, Rudraksh Ltd. after extinguishing all its liabilities in compliance, filed an application in August, 2018 to the Registrar for the removal of its name from the register of companies. Filing of an application under section 248 is after the period of three months from the date of filing of application for the sanction of proposal of Merger. So objection raised by Shri Narayanan Ltd. is not tenable and Rudraksh Ltd. can file an application for removal of its name from register of companies.

(c) A responsibility has been cast upon Key Managerial Personnel (KMP'S), Directors, and Promoters that they shall comply with responsibilities or obligations assigned to them under the SEBI (LODR) Regulations, 2015.

The following are the common obligations on Listed entities:-

1. Regulation 6: Compliance Officer And his Obligations

A listed entity shall appoint a qualified Company Secretary as the Compliance Officer. The Compliance officer so appointed shall be responsible for ensuring conformity with regulatory compliance, co-ordination and reporting to the Board, ensuring that correct procedures have been followed that would result in correctness of information filed by listed entity under the regulations and monitoring email address of grievance redressal division.

2. Regulation 7: Share Transfer Agent

The listed entity shall appoint a share transfer agent or manage the share transfer facility in house.

(d) (i) According to the FEM (Acquisition and transfer of property in India) Regulations, 2018, a non-resident Indian, who is a person of Indian origin and resident outside India may acquire immovable property in India other than an agricultural property, plantation, or a farm house.

Provided that in case of acquisition of immovable property, consideration for transfer, if any, shall be made out of (i) funds received in India through normal banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules and the regulations framed thereunder.

Provided further that no payment for any transfer of immovable property shall be made either by traveller's cheque or by currency notes of any foreign country or any mode other than those specifically permitted by this clause.

Thus, in the given situation, the said director who is a person of Indian origin with US citizenship can acquire the commercial premises in India and can transfer to person resident in India i.e., to the Company, Abhiman Ltd.

If the director would have been a US citizen of non Indian origin then he will not be allowed to acquire the property in India.

(ii) The definition of secured creditor under section 2(zd) of SARFAESI Act, 2002 includes debenture trustee appointed in respect of debt securities by an bank /financial institution, and corresponding recourse have also been made in SARFAESI Act and RDDBFI Act. Hence Deep Ltd. shall have an alternative to all options available to any secured creditor under the law such as enforcement of security, sale of loans to ARC etc. Unlike NBFC for which a threshold of assets of 500 crore is put for applicability of the SARFAESI Act, there is no such limit for debenture holders.

4. (a) (i) Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to a managerial personnel is linked to the effective capital of the company. Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding Rs. 120 Lakh in the year in case the effective capital of the company is Rs. 100 crore to 250 crore. The limit will be doubled if approved by the members by special resolution and further if the appointment is for a part of the financial year the remuneration will be pro-rated.

From the foregoing provisions contained in schedule V to the Companies Act, 2013 the payment of Rs. 60 Lac in the year as remuneration to Mr. Xavier is valid in case he accepts it, as under the said schedule he is entitled to a remuneration of Rs. 120 Lakh in the year.

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

In light of the above provisions of law, the company is not liable to pay any compensation to Mr. Young, if he has been found guilty of fraud or breach of trust or gross negligence in the conduct of affairs of the company. But, it is not proper on the part of the company to withhold the payment of compensation on the basic of mere allegations. The compensation payable by the company to Mr. Young would be Rs. 13 Lacs calculated at the rate of Rs. 12 Lacs per annum for unexpired term of 13 months.

(b) Section 7(A) of the Securities (Contracts) Regulation Act, 1956 provides that a recognised stock exchange is empowered to amend rules to provide for all or any of the following matters:

(a) Restriction of voting right to members only.

(b) Regulation of voting rights by specifying that each member is entitled to one vote only irrespective of number of shares held.

(c) Restriction on right of members to appoint proxy.

(d) Such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (a), (b), and (c).

As such Bombay Stock Exchange can restrict the appointment of Veer Ltd., as proxy, if rules of the exchange so provide. If it is not so provided, rules may be amended and after getting approval of the Central Government regarding amendment, it can restrict appointment of proxies.

Bombay Stock Exchange can also restrict the voting rights of Param Ltd. if rules of the exchange so provide. If it is not so provided, rules maybe amended and after getting approval of Central Government regarding amendment, it can restrict the voting rights of Param Ltd.

(c) Top Limited failed to repay the amount borrowed from the XYZ Bank, which is holding a charge on all the assets of the company. The bank took over the control on management of the company in compliance to the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing five persons as directors. The company is managed by a Managing Director, Mr. MD.

Here, Top Limited is a borrower and XYZ Bank is a secured creditor.

Compensation to Managing director (Mr. MD) for loss of office:

According to section 16 of the SARFAESI Act, 2002, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act.

However any such managing director or any other director or manager or any such person in charge of management has the right to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

So, Mr. MD is not entitled to compensation for loss of office.

(d) The Code provides for establishment of insolvency professionals agencies (IPA) to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy Code 2016 and read with relevant regulations.

Principles governing registration of Insolvency Professional Agency

- to promote the professional development of and regulation of insolvency professionals
- to promote the services of competent insolvency professionals to cater to the needs of debtors, creditors and such other persons as may be specified
- to promote good professional and ethical conduct amongst insolvency professionals
- to protect the interests of debtors, creditors and such other persons as may be specified
- to promote the growth of insolvency professional agencies for the effective resolution of insolvency and bankruptcy processes under this Code.

5. (a) As per the provisions given in Section 151 of the Companies Act, 2013, a listed company may have one director elected by such small shareholders in such manner and on such terms and conditions as prescribed in Rule 7 of the *Companies (Appointment and Qualification of directors) Rules, 2014.* "Small Shareholders" means a shareholder holding shares of nominal value of not more than Rs. 20000/- or such other sum as may be prescribed.

(1) The *Companies (Appointment and Qualification of directors) Rules, 2014* provides for the procedure for appointment of Small shareholders' director according to which:

(A) A listed company, may upon notice of not less than

(a) one thousand small shareholders; or

(b) one-tenth of the total number of such shareholders,

Whichever is lower; have a small shareholders director elected by the small shareholder. However, a listed company may opt suomoto, to have a director representing small shareholders.

(B) The small shareholders intending to propose a person as a candidate for the post of small shareholder's director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

However, if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

(C) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholder's director stating-

(a) his Director Identification Number;

(b) that he is not disqualified to become a director under the Act; and

(c) his consent to act as a director of the company.

A person shall not be appointed as small shareholder's director of a company, if he is not eligible for appointment as a director as per the provisions of the Companies Act, 2013. In compliance with the said provisions Mr. X can be appointed as the small shareholder by the group of shareholders in Board of Directors of ABC Ltd.

(2) Such small shareholders' director shall be considered as an independent director if he fulfills all the conditions/pre requisite to become an independent director as mentioned in Section 149(6) and gives a declaration of his independence in accordance with the provisions of section 149(7) of the Companies Act, 2013.

The appointment of small shareholder's director i.e. Mr. X shall be as per the provisions of Companies Act, 2013, except that—

(a) such director shall not be liable to retire by rotation;

(b) such director's tenure as small shareholder's director shall not exceed a period of three consecutive years; and

(c) on the expiry of the tenure, such director shall not be eligible for re-appointment.

(b) To convert a Inter State Co-Operative Society into a producer company the provisions of Section 581 J of the Companies Act, 1956 should be kept in mind and should be followed. These provisions provide that-

1. **Application to registrar:** Any inter-state co-operative society having objects for multiplicity for states may make an application to the Registrar for registration as Producer Company.

2. **Formalities to be complied with:** Such application shall be accompanied by—

(a) a copy of the special resolution, of not less than two-third of total members of inter-State Co-Operative society, for its incorporation as a producer company,

(b) a statement showing—

(1) names and addresses or the occupation of the directors and Chief Executive, if any; and

(2) list of members, of such inter-State co-operative society;

(c) a statement indicating that the inter-State co-operative society is engaged in any one or more of the objects specified in section 581 B;

(d) a declaration by two or more directors of the inter-State co-operative society certifying that particulars given in clause(a) to (c) are correct.

2. **Naming of company:** The word "Producer Company Limited" should form part of its name to show its identity.

3. **Time period for registration**: On compliance with the requirements of the Act, the Registrar shall, within a period of thirty days of the receipt of application, certify under his hand that the inter-State co-Operative society applying for registration is registered and thereby incorporated as a producer company.

4. **Eligibility to file an application for such registration:** A co-operative society formed by producers, by federation or union of co-operative societies of producers or co-operative of producers, registered under any law for the time being in force which has extended its objects outside the State, either directly or through a union or federation of co-operatives of which it is a constituent, as the case may be, and any federation or union of such co-operatives, which has so extended any of its objects or activities outside the State, shall be eligible to make an application as above to obtain registration as a producer company under this Part.

5. **Governing of this transformed company by the provisions of this Part of the Companies Act, 2013:** The Inter-State Co-operative Society upon its registration, under this section transformed into a producer company, and thereafter shall be governed by the provisions of this Part to the exclusion of the law by which it was governed, save in so far as anything done or omitted to be done before its registration as a producer company, and notwithstanding anything contained in any other law for the time being in force, no person shall have any claim against the co-operative institution or the company by reason of such conversion or transformation.

6. **Deletion of the previous registration:** Upon registration as a producer company, the registrar of Companies who registers the company is required to intimate the Registrar with whom the erstwhile inter-State co-operative society was earlier registered for appropriate deletion of the society from its register.

In compliance with above provision Fresh Fruits Co-operative Society can be converted into producer company.

(c) As per Regulation 3 of *Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation, 2016*, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor. However such an Insolvency professional who is appointed as an resolution professional shall not be an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last three financial years, subject to compliance of other requirements.

In the given instance, Mr. Ramlal, was appointed as Resolution professional for a corporate insolvency process initiated against the Monotech Ltd. During the process, it was discovered that Mr. Ramlal is a partner of a consultant firm M/s supervision and company, which has made transaction of 11% of the gross turnover of the firm in the financial year 2017-2018 with Monotech Ltd.

Accordingly, Mr. Ramlal being a partner of the Firm had made a transaction of more than 10% of the gross turnover of the firm in the previous financial year 2017-2018. So his appointment as resolution professional against Monotech Ltd for initiation of CIRP, is not valid.

Replacement of Resolution Professional: As per the Code, if a debtor or a creditor is of the opinion that the resolution professional appointed is required to be replaced, he may apply to the Adjudicating Authority (AA) for replacement of such professional. Within seven days of receipt of the application AA may make reference to the Board for Replacement of Resolution Professional. As per Section 27 of the Code, the Committee of Creditors (CoC) may replace the insolvency Resolution Professional with another resolution professional by passing a resolution for the same to be approved by a vote of seventy five per cent of voting shares of the creditors. The Committee of Creditors shall forward the name of the new proposed Insolvency Professional to the Adjudicating Authority, and after the confirmation of the proposed insolvency resolution

professional by the Board he shall be appointed in the same manner as laid down in Section 16 which deals with the Appointment of IRP.

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

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

(b) According to section 383 of the Companies Act, 2013, any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 of the Companies Act, 2013, and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode. Hence, the registrar may serve the show cause notice by following the above provisions.

(c) According to sections 421 of the Companies Act, 2013, any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person. However extension of further 45 days may be granted as per proviso to section 421(3).

Whereas section 422 of the Companies Act, 2013, states that every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal within 3 months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

Where any application or petition or appeal is not disposed of within the period specified above, the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to above, by such period not exceeding ninety days as he may consider necessary.

Accordingly, as per the provisions, following are the answer:

(i) Filing of an appeal before NCLAT is in order as per section 421. As per the given facts, appeal is made within 45 days from the date on which a copy of the order of the Tribunal is made available to the person.

(ii) As per section 422, appeal preferred before the NCLAT, shall be disposed within 3 months from the date of its presentation before the Appellate Tribunal. Where any application or petition or appeal is not disposed of within the period specified above, the Appellate Tribunal, shall record the reasons for the same; and the President or the Chairperson, may, after taking into account the reasons so recorded, extend the period referred to above, by such period not exceeding ninety days as he may consider necessary. So accordingly appeals should be disposed off by the NCLAT latest by May 2018.

(d) As per Schedule III of the *FEM (Current Account Transactions) Rules, 2000,* a person who is resident but not permanently resident in India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary, after deduction of taxes, contribution to provident fund and other

deductions. Accordingly, Mr. Manthan can remit the salary after payment of taxes and contributions related to social security schemes.

(e) In terms of Sec.12 (4) of FCRA, 2010, the following restrictions/conditions have been marked for the grant of registration and prior permission for acceptance of foreign contribution:

The 'person' making an application for registration or grant of prior permission -

i. is not fictitious or benami;

ii. has not been prosecuted or convicted in activities aimed at conversion from one religious faith to another;

iii. has not been prosecuted or convicted for creating communal tension / disharmony

iv. has not been found guilty of diversion or mis-utilisation of its funds;

v. is not engaged or likely to engage in propagation of sedition or violent methods to achieve its ends;

vi. is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;

vii. has not contravened any of the provisions of this Act;

viii. has not been prohibited from accepting foreign contribution;

ix. the person being an individual, neither been convicted nor any prosecution for any offence is pending against him.

x. the person being other than an individual, any of its directors or office bearers has neither been convicted nor any prosecution for any offence is pending against him.