

MODEL TEST PAPER 2
FINAL (NEW) COURSE
PAPER 4: CORPORATE AND ECONOMIC LAWS

Question no. 1 is compulsory.

*Attempt any **four** questions out of the remaining **Five** questions*

Maximum Marks-100 Marks

Time Allowed: 3 Hours

SOLUTION

1. (a) (i) **Number of directorships:** As per section 165(1) of the Companies Act, 2013, no person shall hold office as director, including any alternate directorship, in more than 20 companies at the same time.

Out of the limit of 20, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10. [Proviso to section 165(1)]

Private companies that is either holding or subsidiary company of a public company shall be included in reckoning the limit of public companies in which a person can be appointed as a director.

In the instant case, Ms. R was appointed as a women director on 1st March, 2017 in Excel Limited. She was already holding directorship in twelve companies including ten public companies.

As Ms. R was already a director in ten public companies, her appointment in Excel Limited is not valid as it will lead to her directorship in 11 public companies.

In this case, either she can choose between the companies in which she wishes to continue to hold the office of director or resign her office as director in the other remaining companies to maintain the limit of holding of directorship.

- (ii) **Remuneration:** In the given case, since, the company has suffered losses in the last two years, the company will pay remuneration to its directors in accordance with the provisions of Schedule V to the Companies Act, 2013.

In case of a managerial person who is functioning in a professional capacity, no approval of Central Government is required, if such managerial person is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any, direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates. [Item B of Section II of Schedule V]

The total remuneration that supreme Limited is intending to pay to Ms. R is 72 lakhs per annum, from the current remuneration of 48 lakhs per annum. Since Ms. R is working in professional capacity and the remuneration has been proposed by the remuneration Committee, no approval of Central Government is required. Also, the case shall be in compliant of Schedule V, Central Government approval will not be required even when there is increase in remuneration payable.

- (b) There exists a principal-agent relationship between the members of the recognised stock exchange and the investors, since the members normally carry out the transactions on the behalf of the investors.

A member can enter into transaction as principal with another member of the Exchange only.

If he desires to enter into contract as principal with a non-member, then he has to get the written consent from such person to act as a principal.

As per section 15 of the Securities Contract (Regulation) Act, 1956, the members use Contract Notes as a written document as an evidence that the said investor has appointed the member to transact on their behalf and that the member shall be acting as a principal.

Where the member has secured the consent of such person otherwise than in writing, he shall secure written confirmation by such person or such consent within 3 days from the date of the contract. (Proviso to section 15)

However, it is important to note here that as per section 18 of the Act, spot delivery contracts are outside the purview of section 15.

Thus, Cliché Clicks LLP should note the above provisions of section 15 & 18 of the Act and then proceed accordingly while dealing with investors in the securities market.

- (c) (i) **Obligation of Banking Companies, Financial Institutions and Intermediaries:** Section 12 of the Prevention of Money Laundering Act, 2002 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries. According to sub-section (1), every Banking Companies, Financial Institutions and Intermediaries shall maintain the records referred to in clause (a) of sub-section (1) for a period of five years from the date of transaction between a client and the reporting entity. For the records referred to in clause (e) of sub-section (1), it shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

As per the facts given in the questions, 'Jan hit' opened current account with DENA Bank on 1st July, 2012 and closed the account on 30th June 2016.

As per the above provisions, DENA Bank shall maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

So, accordingly the DENA Bank has to maintain the records relating to the account of "Jan hit" till 30th June, 2021.

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

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

- 2 (a) **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:

₹ 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:

- (i) No. of members making the petition – 80
- (ii) Amount of share capital held by members making the petition – ₹ 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 1/10th of 500); or

Members holding ₹ 50,00,000 share capital (being 1/10th of ₹ 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.

The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition [*Rajamundhry Electric Corporation Vs. V. Nageswar Rao A.I.R. (1956) Sc. 2013.*].

- (b) According to section 226 of the Companies Act, 2013, an investigation may be initiated notwithstanding, 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) There are two basic types of arbitration agreement:

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

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

In the second case, the Principal contract (JVA) does not have any term relating to arbitration. Disputes arose between the parties concerning quality of supplied goods in 2017. To resolve this dispute, parties later entered into an agreement “That all disputes including quality of goods supplied by Company USHA to Company Amar shall be submitted to arbitration. The parties hereby agree to abide by the decision of the arbitrator.” Such an agreement that is made after the disputes have arisen would be called a submission agreement.

3. (a) As per section 234 of the Companies Act, 2013, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

(b) (i) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a “foreign company” means any company or body corporate incorporated outside India which:

- (a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) Conducts any business activity in India in any other manner

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

From the above definition, the status of XYZ Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India

- (ii) The Companies Act, 2013 vide section 380 requires every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to *the Companies (Registration of Foreign Companies) Rules, 2014*, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.
- (c) The Securities and Exchange Board of India (SEBI) was established primarily for the purpose of -
- (1) to protect the interests of investors in securities
 - (2) to promote the development of securities market
 - (3) to regulate the securities market and
 - (4) For matters connected therewith and incidental thereto.

The following defaults by stock brokers come within the purview of SEBI Act:

Any failure on the part of the stock broker to issue contract notes in the form and in the manner specified by the Stock Exchange.

Any failure on the part of the broker to deliver any security or to make payment of the amount due to the investor in the manner or within the period specified in the regulations.

Any collection of charges by way of brokerage in excess of the brokerage as specified in the regulations. (Section 15 F, SEBI Act, 1992)

- (d) Apex Limited failed to repay the amount borrowed from the bankers, ACE Bank Limited, which is holding a charge on all the assets of the company. The bank took over management of the company in accordance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The company is managed by a Managing Director, Mr. X.

Here, Apex Limited is a borrower and ACE Bank Limited is a secured creditor.

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

According to section 16 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, irrespective of anything contained in any contract or in any other law for the time being in force, 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.

Effect of takeover on rights of the shareholders:

Where the management of the business of a borrower, being a company as defined in the Companies Act is taken over by the secured creditor, then, notwithstanding anything contained, such borrower- in the said Act or in the memorandum or articles of association of such company -

- (1) 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 of the company;
- (2) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;
- (3) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

The secured creditor is under an obligation to restore the management of the business of the borrower, on realisation of his debt in full, in case of takeover of the management of the business of a borrower by such secured creditor.

"Provided that if any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, such secured creditors shall not be liable to restore the management of the business to such borrower."

- (a) (i) Under section 149(1) of the Companies Act, 2013 every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of 3 directors in the case of a public company. The maximum number of directors shall be 15.

However, the proviso to section 149(1) states that a company may appoint more than 15 directors after passing a special resolution.

In the given case, since the number of directors is proposed to be increased to 16, the company will be required to comply with the following provisions:

- (1) Alter its Articles of Association under section 14 of the Act, so as to increase the number of directors in the Articles from 12 to 16;
- (2) Approval shall also be taken to be authorised to increase the maximum number of directors to 16 by means of a special resolution of members passed at a duly convened general meeting of the company.

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

Section 152(7)(b) further provides that if at the adjourned meeting also, the place of the retiring is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting.

Accordingly, as per the above provisions, the retiring director shall be deemed to have been re-appointed at the adjourned meeting.

- (iii) Section 152(7)(b) further marks the restrictions that, if at the adjourned meeting or at the previous meeting a resolution for the re-appointment of such directors was put and lost or he has given a notice in writing addressed to the company and the Board of Directors expressing his desire not to be re-elected or he is disqualified, the retiring director shall not be deemed to have been re-appointed at the adjourned meeting.

- (b) Price manipulation in the shares of ABC Ltd. can be considered as fraudulent and unfair trade practices relating to securities market. In this case SEBI may exercise the following powers under section 11(4) of securities and Exchange Board of India Act, 1992.

- (i) Suspend the trading of any security (in this case the securities of ABC Ltd.) in a recognized stock exchange.

- (ii) Restrain persons (in this case ABC Ltd.) from accessing the securities market. It can also prohibit any person associated with securities market (i.e. brokers who have indulged in price manipulation) to buy, sell or deal in securities market.

SEBI may issue the above orders for reasons to be recorded in writing. SEBI shall, either before or after passing such orders give an opportunity of hearing to company and brokers concerned (proviso 2 to Section 11(4)) SEBI may also appoint an adjudicating officer who may levy penalty under section 15 HA after holding an enquiry in the prescribed manner. According to section 15HA if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be levied to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Prohibition on manipulation and deceptive practices: Further according to section 12A, no person shall directly or indirectly indulge in following (i.e.) (a) using in manipulative or deceptive device in connection with purchase, sale or securities listed (b) Employ any scheme or device to defraud in connection with dealing in securities which are listed (c) engage in an act which would operate as fraud or deceit upon any person in connection with dealing in securities which are listed. SEBI may impose penalty which shall not be less than one lakh rupees but which may extend to one crore rupees. (Section 15 HB).

- (c) As per Section 8 of the Foreign Exchange Management Act, 1999 where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by Reserve Bank of India.

But as per section 9(e) of the said Act, this provision shall not apply to foreign exchange acquired from employment, business trade, vocation, service honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank of India may specify.

The Reserve Bank of India has specified the following persons with the limits for possession and retention of foreign currency by a person resident in India:

Any person may possess foreign coins without any restriction to the amount.

Any person resident in India is permitted to retain in aggregate foreign currency not exceeding USD 2,000 or its equivalent in the form of currency notes/bank notes or travelers cheques acquired by him;

Any person resident in India but not permanently resident therein is permitted to hold the foreign currency without limit, if the foreign currency was acquired when he was resident outside India and was brought into India and declared to the custom authorities.

In the given case as Mr. Rajat earned a sum of USD 3000 as a honorarium when he was in employment in China. But in view of the restrictions under FEMA and the aforesaid regulation he can retain foreign exchange up to USD 2000 only and not more than that.

- (d) According to Section 18 of the Insolvency and Bankruptcy Code, 2016, Mr. Madhyam as an Interim Resolution Professional shall perform the following duties:
- (a) collect all information relating to the assets, finances and operations of Corporate debtor including information relating to:
- Its business operations for the previous two years;
 - Its financial and operational payments for the previous two years ;
 - A list of assets and liabilities of Corporate Debtor as on the initiation date; and

- Other specified matters;
 - (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made by him under sections 13 and 15;
 - (c) constitute a committee of creditors;
 - (d) monitor the assets of Corporate Debtor and manage its operations until a Resolution Professional (RP) is appointed by the committee of creditors;
 - (e) file information collected with the information utility, if necessary and
 - (f) take control and custody of the assets over which Corporate Debtor has ownership rights like plot, factory building, debtors, etc.
 - (g) perform such other duties as may be specified by IBBI.
- 5 (a)** Under section 179(3) of the Companies Act, 2013, the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board:
- (a) To make calls on shareholders in respect of money unpaid on their shares;
 - (b) To authorise buy-back of securities under section 68;
 - (c) To issue securities, including debentures, whether in or outside India;
 - (d) To borrow monies
 - (e) To invest the funds of the company
 - (f) To grant loans or give guarantee or provide security in respect of loans;
 - (g) To approve financial statement and the Board's report;
 - (h) To diversify the business of the company;
 - (i) To approve amalgamation, merger or reconstruction;
 - (j) To take over a company or acquire a controlling or substantial stake in another company;
 - (k) Any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

Matters referred to in clauses (d), (e), and (f) above, may be decided by the board by circulation instead of at a meeting in respect to the companies covered under section 8 of the Companies Act, 2013 vide Notification dated 5th June 2015.

From the above provisions, it is clear that the power to borrow monies under (d) above, may be delegated to the Managing Director or to the manager or any other principal officer including a branch officer of the company.

- (b)** Section 348 of the Companies Act, 2013 states that, if the winding up of a company is not concluded within one year after its commencement then the Company Liquidator shall file a statement in such form containing such particulars as may be prescribed. Such statement shall be filled within two months of the expiry of such year and it shall be filled continuously thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals as may be prescribed. The statement shall be duly audited, by a person qualified to act as auditor of the company and position of with respect to the proceedings in the liquidation,

The statement shall be filed with the tribunal in the case of a winding up by the Tribunal. a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

Where a statement relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof,

- ◆ to the Central Government, if that Government is a member of the Government company;
- ◆ to any State Government, if that Government is a member of the Government company; or
- ◆ to the Central Government and any State Government, if both the Governments are members of the Government company.

DEF Limited is a Government Company

In the current scenario, we can understand that the DEF Limited is a government company in which Central Government is a member and hence statement is also required to file to the Central Government along with the Tribunal and Registrar. So, the opinion by the Company Liquidator is not tenable in the eyes of the law and he is liable for penal action under the act.

The company liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

DEF Limited is a Non-Government Company

In the current scenario, the DEF Limited is a non-government company hence statement is only required to file with the Tribunal and Registrar only. So, the opinion by the Company Liquidator is tenable in the eyes of the law and he is not liable for any penal action under the act.

- (c) **Validity of the conduct of undervalued transaction:** As per the provisions given in section 45 of the Insolvency and Bankruptcy Code, 2016, Mr. X, a resolution professional, on an examination of the transactions of the Corporate Debtor, determines that certain transactions were made by Corporate Debtor with a related party, within the period of two years preceding the insolvency commencement date (in 6 months preceding the Insolvency Commencement date), which were undervalued. Mr. X, shall make an application to the NCLT to declare such transactions as void and reverse the effect of such undervalued transaction and requiring the person who benefits from such transaction to pay back any gains he may have made as a result of such transaction.

Failure to report to NCLT of undervalued transactions: As per the stated facts given in the light of the provisions laid in Section 47 of the Insolvency and Bankruptcy Code, an undervalued transaction has taken place and Mr. X (Resolution Professional) has not reported it to the NCLT, in such case, a creditor, member or a partner of a Corporate Debtor, as the case may be, may make an application to the NCLT to declare such transactions void and reverse their effect in accordance with the relevant provisions of this Code.

Order of NCLT: Where the NCLT, after examination of the application made above, is satisfied that undervalued transactions had occurred; and Mr. X (RP) after having sufficient information or opportunity to avail information of such transactions did not report such transaction, there it shall pass an order of —

- (a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48 of the Code. The order of the Adjudicating Authority may provide for the following:—
1. require any property transferred as part of the transaction, to be vested in the corporate debtor;

2. release or discharge (in whole or in part) any security interest granted by the corporate debtor
 3. require any person to pay such sums, in respect of benefits received by such person, to the Mr. X (RP), as the Adjudicating Authority may direct; or
 4. require the payment of such consideration for the transaction as may be determined by an independent expert.
- (b) requiring the Board (IBBI) to initiate disciplinary proceedings against Mr. X.
- 6 1(a) (i) According to Rule 4(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors:
- (1) the Public Companies having paid up share capital of 10 crore rupees or more; or
 - (2) the Public Companies having turnover of 100 crore rupees or more; or
 - (3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

In the present case, XYZ Limited is an unlisted public company having a paid-up capital of ` 20 crore as on 31st March, 2017 and a turnover of ` 150 crore during the year ended 31st March, 2017. Thus, as per the Companies (Appointment and Qualification of Directors) Rules, 2014, XYZ Limited shall have at least 2 directors as independent directors.

As per Rule 4(2) of the *Companies (Appointment and Qualification of Directors) Rules, 2014*, the following classes of unlisted public company are not covered under Rule 4(1), namely:-

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Act.

Accordingly, if XYZ, is a dormant company does not require to make appointment of Independent Directors.

- (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.

¹ The answer is based on the amended rule Inserted by the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 Dated 5th July, 2017.

(c) **Cognizance of offence:** A court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof only on the written complaint of -

- (1) The Registrar,
- (2) A shareholder of the company, or
- (3) Of a person authorised by the Central Government in that behalf.

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.

In the present case, Mr. Joseph, a member of Armaments Ltd. is aggrieved due to failure of the company to make payment of dividend declared in the AGM held in August 2015. He makes a complaint, in writing, before the court of competent jurisdiction within the prescribed period of limitation, but the court refused to take cognizance of the alleged offence.

Here, the Court shall take cognizance of the offence relating to non-payment of dividend as the shareholders have made a complaint in writing before the competent jurisdiction.

Cognizable and non-cognizable offences: Overriding the provisions given under the Code of Criminal Procedure, 1973, every offence under the Companies Act, 2013 except the offences referred to in section 212(6) of the Companies Act, 2013, which deals with the investigation into affairs of company by serious fraud investigation office, shall be deemed to be non-cognizable within the meaning of the said Code.

Therefore, the offences as covered under section 212(6) shall now be deemed to be cognizable where police officer may arrest person without warrant and are non-bailable. The Companies Act, 2013 establishes the offence covered under section 212(6) as a public wrong which has to be prevented and controlled. This non-bailable nature of the offences deter the offender and the others from committing further and similar offences.

(d) As per sub-section 5 of section 6 of the FEMA, 1999, a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

Accordingly, in the problem, Mrs. Chandra, a resident outside India, may acquire or hold any immovable property of his father in India by way of inheritance in both the conditions, firstly, where her father, a resident outside India, had acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or as per the provisions of these Regulations or secondly, where her father, a resident in India.

(e) As per section 17 of the FCRA, 2010, the foreign contribution should be received only in the exclusive single foreign contribution account of a Bank (also called designated FC account), as mentioned in the order for registration or prior permission granted and should be separately maintained by the associations. However, one or more accounts (called Utilization Account) in one or more banks may be opened by the association for 'utilising' the foreign contribution after it has been received in the designated FCRA bank account, provided that no funds other than that foreign contribution shall be received or deposited in such account or accounts and in all such cases, intimation is to be given online within 15 days of opening of such account.