PAPER- 4 – CORPORATE AND ALLIED LAWS

Question No. 1 is compulsory.

*Answer any **five** from the rest*

Question 1

(a) Explain the law laid down under the Companies Act, 2013 in respect of filing of annual financial statements with Registrar of companies in the following two situations who is liable for the default.

(i) Where financial statements of the company are filed with the ROC after 10 months from its due date;

(ii) Where financial statements are not at all filed by the company with the ROC?

(4 Marks)

(b) A group of creditors of Mac Trading Limited makes a complaint to the Registrar of Companies, Hyderabad alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 10 A.M. on 1st July 2015 and the ROC entered the premises at 10.30 A.M. for the search. Examine the powers of the Registrar to seize the books of the company.

(4 Marks)

(c) Indian Software Ltd. seeks to export software to its client in Indonesia. In this regard -

(i) explain the procedure to be adopted for export of software under the Foreign Exchange Management Act, 1999 and also state the period within which export value is to be realised.

(ii) explain the position in case of delay in receipt of payment from its client. (4 Marks)

(d) Explain the functioning of the 2 types of Front Office (FO) in accessing MCA 21 portal of the Ministry of Corporate Affairs.

Also state the nature of services which can be availed of by its user on the MCA 21 portal. (4 Marks)

(e) XYZ, a recognized stock exchange fails to comply with certain directions issued by the Securities and Exchange Board of India and the adjudicating officer initiated proceedings for the purpose of imposing penalty. The stock exchange seeks your advice whether it is possible to go for settlement of the proceedings. Advise explaining the relevant provisions of the Securities Contracts (Regulation) Act, 1956? (4 Marks)

Answer

(a) (i) Under section 403 of the Companies Act, 2013, any document may be filed within

270 days from the date by which it should have been filed under the Act. Any such document be also filed after 270 days on payment of fee and additional fee as may be prescribed, and the company and its officers who are in default shall be liable for the penalty or punishment provided under the Act.

Accordingly, in the present case, the financial statement has been filed after 270 days. Thus, the company may file the same on payment of fee and additional fee after 10 months. The company and its officers may approach ROC for compounding the offence, to avoid any prosecution by ROC for such failure or default.

(ii) Under section 137 (3) of the Companies Act, 2013, if a company fails to file the financial statement, the company and the Managing director and the Chief Financial officer, if any, and in their absence, any other director who is charged by the Board with the responsibility of complying with the extent provisions, and in the absence of any such director, all the directors of the company, shall be punishable.

(b) Search and seizure - Section 209 of the Companies Act, 2013 provides that where upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of -

(i) a company, or

(ii) relating to the key managerial personnel, or

(iii) any director, or

(iv) auditor, or

(v) company secretary in practice if the company has not appointed a company secretary,

- are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,—

  (1) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and

  (2) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.

According to the above provisions, Registrar may enter and search the place where such books or papers are kept and seize them only after obtaining an order from the Special Court.

Since in the given question, Registrar entered the premises for the search and seizure of books of the company without obtaining an order from the Special Court, he is not authorised to seize the books of the Mac Trading Limited.

(c) (i) Procedure for the export of the software under the FEMA, 1999

1. Furnishing of declaration- In case of exports taking place through Customs manual ports, every exporter of goods or software in physical form or through any other form, either directly or indirectly, to any place outside India, other than Nepal and Bhutan, shall furnish to the specified authority, a declaration in one of the forms set out in the Schedule and supported by such evidence as may be specified, containing true and correct material particulars including the amount representing-

   (i) the full export value of the goods or software; or

   (ii) if the full export value is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions expects to receive on the sale of the goods or the software in overseas market, and affirms in the said declaration that the full export value of goods (whether ascertainable at the time of export or not) or the software has been or will within the specified period be, paid in the specified manner.

2. Execution of declaration- Declarations shall be executed in sets of such number as specified. In this regard no declaration is required in case goods or software accompanied by a declaration by the exporter that they are not more than 25,000 USD in value.

3. Export of services without furnishing any declaration- In respect of export of services to which none of the Forms specified in these Regulations apply, the exporter may export such services without furnishing any declaration, but shall be liable to realise the amount of foreign exchange which becomes due or accrues on account of such export, and to repatriate the same to India in accordance with the provisions of the Act, and these Regulations, as also other rules and regulations made under the Act.

   Period within which export value of goods/software to be realised.

   The amount representing the full export value of goods or software exported shall be realised and repatriated to India within twelve months from the date of export.

   For the purpose of this regulation, the "date of export" in relation to the export of software in other than physical form, shall be deemed to be the date of invoice covering such export.

   Provided that where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorised dealer as soon as it is realised and in any case within fifteen months from the date of shipment of goods:

Provided further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the said period of twelve months or fifteen months, as the case may be.

(ii) Delay in Receipt of Payment- Where in relation to goods or software export, which is required to be declared on the specified Form, the specified period has expired and the payment therefore has not been made, the Reserve Bank may give to any person who has sold the goods or software or who is entitled to sell the goods or software or procure the sale thereof, such directions as appear to it to be expedient, for the purpose of securing,-

(a) The payment thereof if the goods or software has been sold, and

(b) The sale of goods and payment thereof, if goods or software has not been sold, or

(c) Re-import thereof into India as the circumstances permit, within such period as the Reserve Bank may specify in this behalf:

Provided that omission of the Reserve Bank to give directions shall not have the effect of absolving the person committing the contravention from the consequences thereof.

(d) The implementation of Front Office (FO) is done in two ways, namely, Virtual Front Office (VFO) and Physical Front Office (PFO). VFO is what the citizen has in front while accessing MCA 21 portal. The PFO will be a replacement to the existing ROC counters. PFO will also accept paper documents. However, these will be converted into electronic documents by customer service agents manning PFO. The authorised signatories for a given document to sign digitally will need to appear in person at the PFO.

The user can avail the following services on MCA 21 portal:

- e-filing
- Viewing public document
- Requesting certified copies
- Registering investor complaint
- Tracking transaction status

(e) Settlement of administrative and civil proceedings [Section 23JA of the Securities Contracts (Regulation) Act, 1956]-

(1) Filing of application to the Board- Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 12A or section 23-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) Board may consider for the settlement- The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.

(3) Procedure to be followed as prescribed under the SEBI Act- For the purposes of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 shall apply.

(4) No appeal to an order- No appeal shall lie under section 23L against any order passed by the Board or the adjudicating officer, as the case may be, under this section.

So according to the above provision of the Securities Contracts (Regulation) Act, 1956, XYZ, stock exchange may propose for the settlement of the proceedings.

Question 2

(a) (i) XTZ Ltd. wants to make an initial offer of its securities. Advise the company on the following issues under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009:-

(1) Extent of promoters contribution;

(2) Lock in period of securities held by promoters;

(3) Lock in period of securities held by persons other than promoters;

(4) Lock in period of securities allotted to employees of the company under Employee stock option. (4 Marks)

(ii) Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of LR Ltd., a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry. (4 Marks)

(b) On a reference made by the Central Government, the Company Law Board passed an order authorizing the Central Government to appoint its nominees as directors of Bangalore Computers Ltd., to safeguard the interest of shareholders and public interest. Referring to the provisions of the Companies Act, 2013 state the restrictions, if any, on the number of directors and the period for which such appointment may be made. State also the action that may be taken by the Central Government with regard to the affairs of the company when such appointment of directors is made by the Central Government.

(4 Marks)

(c) What are the conditions to be fulfilled for calling meetings at shorter notice than as prescribed by Companies Act, 2013.

One of the directors, a senior professional, objected to receiving the notice by e-mail. Advise him. *(4 Marks)*

Answer

(a) (i) (1) Extent of promoters contribution- As per the regulation 32 of the SEBI (ICDR) Regulations, 2009, the promoters of the issuer shall contribute in the case of an initial public offer, not less than twenty per cent of the post issue capital:

Provided that in case the post issue shareholding of the promoters is less than twenty per cent, alternative investment funds may contribute for the purpose of meeting the shortfall in minimum contribution as specified for promoters, subject to a maximum of ten per cent of the post issue capital.

(2) Lock-in period of specified securities held by promoters- As per the regulation 36 of the SEBI (ICDR) Regulations, 2009, in an initial public offer, the specified securities held by promoters shall be locked-in for the period as stipulated hereunder:

(a) minimum promoters' contribution including contribution made by alternative investment funds shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;

(b) promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year:

The expression "date of commencement of commercial production" means the last date of the month in which commercial production in a manufacturing company is expected to commence as stated in the offer document.

(3) Lock-in period of specified securities held by persons other than promoters- As per the regulation 37 of the SEBI (ICDR) Regulations, 2009, in case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year.

(4) Lock in period of securities allotted to employees of the company under employees stock option- As per the regulation 37 of the SEBI (ICDR) Regulations, 2009, in case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year:

Provided that nothing contained in this regulation shall apply to equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the issuer prior to the initial public offer, if the issuer has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII.

(ii) As per section 11 (4) of the Securities and Exchange Board of India Act, 1992, the Board may, by an order, for reasons to be recorded in writing, in the interest of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

1. suspend the trading of any security in a recognised stock exchange;
2. restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
3. suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;
4. impound and retain the proceeds or securities in respect of any transaction which is under investigation;
5. attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

   However only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;
6. direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.

(b) Power of the Central Government to safeguard the interest of shareholders and public interest: The Central Government is empowered to appoint its nominees as directors of a company to effectively safeguard the interest of the company or its shareholders or the public interest. If the Central Government wants to appoint its nominees as Directors of such a company then it has to make a reference to the Company Law Board (CLB) and if the CLB is satisfied that the affairs of the company have been conducted in a manner oppressive to any member of the company or in a manner prejudicial to the interests of the company or to public interest, it may pass an order asking the Central Government to appoint directors for a period not exceeding three years on any one occasion.

There is no limit as to the number of directors that can be appointed. The Central Government may appoint such number of persons as the Company Law Board may, by order in writing, specify but such directors tenure shall not exceed three years at one time as it may think fit.

Notwithstanding anything contained in the Companies Act or in any other law for the time being in force, where any person is appointed by the Central Government to hold office as director or additional director, Section 408 (6) of the Companies Act, 1956, empowers the Central Government to issue such directions to the company as it may consider appropriate in regard to its affairs. Such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company. When such directions are given, the appointment, removal or alteration, as the case may be shall be deemed to have come into effect as if the provisions of the Companies Act in this behalf have been complied without requiring any further act or thing to be done. Though these powers are substantial, yet the same do not empower the Central Government to interfere in the day to day management of the company.

Further, Section 408(7) empowers the Central Government to require the persons appointed as directors to report to the Central Government from time to time with regard to affairs of the company.

Note: In question 2(b), the term 'Companies Act, 2013' may be referred as 'Companies Act, 1956'.

(c) NOTICE OF THE BOARD MEETING & CONDITION TO CALL MEETING AT SHORTER NOTICE - In terms of the proviso to Section 173(3) of the Companies Act, 2013 a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. No exception is made for any class or classes of companies.

Under Section 173 (3) a meeting of the Board shall be called by giving not less than 7 days notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Hence the senior Director's objections to receiving the notice by email is not sustainable.

Question 3

(a) (i) A scheme of amalgamation was approved by overwhelming majority of members of both the merging companies at meetings called as per directions of the Court. When the scheme of amalgamation was awaiting sanction of the Court, the exchange ratio was questioned by a small group of members of one of the merging companies. The exchange ratio was fixed by a reputed firm of Chartered Accountants.

Examine with reference to the decided case law under the Companies Act, 1956 whether the dissenting shareholders will succeed? Would your answer be different if the exchange ratio was objected to by the Central Government? (4 Marks)

(ii) State the circumstances in which a director of a company is required under the Companies Act, 2013 to disclose his interest in a contract or arrangement to be

entered into by the company. Examine whether the validity of the contract is affected by non-disclosure of interest by the director. (4 Marks)

(b) The Articles of Association of Coimbatore Milk Producers Limited restricts the membership to producers. You are required to answer the following questions explaining the relevant provisions of the Companies Act, 1956.

(i) Mr. Gopal, one of the members proposes to transfer part of his shares. State the steps to be taken by Mr. Gopal to give effect to the proposed transfer.

(ii) Mr. Ramu, one of the members, nominated his son, Mr. Krishnan to be entitled to his shares in the event of his death. Mr. Ramu died. State the action that can be taken by the producer company in case Mr. Krishnan is not a producer. (4 Marks)

(c) (i) Shyam & Co. is engaged in the manufacture of cement. It sold the goods initially below the cost price for a year and slowly, its other competitors went out of the market. Thereafter, the enterprise changed its strategy and sold the goods above its cost price and made substantial profits. Examine the action, if any, which may lie against this enterprise under the Competition Act, 2002.

(ii) What do you mean by anti-competitive agreements, viz, tie-in arrangement and resale price maintenance? (4 Marks)

Answer

(a) (i) Amalgamation – Exchange Ratio: In the matter given in the question, the court leaves the aspect of share valuation to expert valuers and shareholders. Unless the person who challenges the valuation satisfies the court that the valuation is grossly unfair, the court will not disturb the scheme of amalgamation. *(Piramal Spg. Vs. Weaving Mills Ltd.)*

In the case where the exchange ratio was questioned by small group of members- In this case, since the valuation is confirmed to be fair by reputed firm of Chartered Accountants and is also confirmed by majority of members, the objection raised by some shareholders of a small group cannot be sustained. *(Hindustan Lever Employees Union Vs. Hindustan Lever Ltd.)*

Case where exchange ratio was objected by the Central Government- Section 394A of the Companies Act, 1956 requires the Court to give notice of every application made to it under sections 391 or 394 of the said Act, to the Central Government. The Court should take into consideration the representations, if any, made to it by the government before passing any order. The role played by the Central Government is that of impartial observer who acts in public interest and advises the court whether it is or it is not feasible for the two companies to amalgamate. Thus, in case of objection by the Central Government, the court will refuse to interfere unless the Government establishes that the exchange ratio was unfair and not in public interest. *(M.G. Investment & Industrial Co. Ltd. Vs. New Shorrock Spinning & Mfg. Co. Ltd.)*

(ii) Circumstances in which disclosure of Interest by director is necessary - Section 184 of the Companies Act, 2013 provides for disclosure of interest by director. According to this section whenever any director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

Following are the circumstances where disclosure is necessary:

Whenever any director of the company, who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into —

(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be.

However, where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

Validity of the contract on non disclosure of interest: A contract or arrangement entered into by the company without disclosing or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

(b) (i) Transferability of shares and attendant rights -According to section 581 ZD of the Companies Act, 1956, a member of a producer company may, after obtaining the previous approval of the Board, transfer the whole or part of his shares along with any special rights, to an active member at par value.

Mr. Gopal may transfer the part of his shares, after obtaining the previous approval of the Board.

(ii) Rights of the nominee related to transfer of shares of the deceased member - According to Section 581ZD (3) every member shall within three months of his becoming a member of producer company nominate, as specified in articles, a person to whom his shares in the producer company shall vest in the event of death. The nominee shall become entitled to all the rights in the shares of the producer company in the event of death of the member. The Board of Directors of

the producer company shall transfer the shares of Mr. Ramu to his nominee Mr. Krishnan.

In this case as the nominee is not a producer, action may be taken by the company under proviso to Section 581ZD(4). The Board of Directors of the producer company shall direct Mr. Krishnan to surrender the shares together with special rights. The surrender may be made either at par value or such other value as may be determined by the Board of Directors of the producer company.

(c) (i) Abuse of dominant position – According to section 4 of the Competition Act, 2002, no enterprise or group shall abuse its dominant position.

In the given instance, Shyam and Co. abused its dominant position by imposing predatory price of goods. Action against this enterprise shall lie in section 27 of the Competition Act, 2002.

Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:—

(a) direct such enterprise to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;

(b) impose such penalty, as it may deem fit which shall not be more than ten percent of the average of the turnover for the last three preceding financial years,

(c) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

(d) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any:

(e) pass such other order or issue such directions as it may deem fit.

While passing orders under this section, if the Commission comes to a finding that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.

(ii) Anti competitive agreements – According to section 3 of the Competition Act, 2002, it shall not be lawful for any enterprise or association of enterprises or person or association of persons to 'enter' into an agreement in respect of production, supply, storage, distribution, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition

within India. These agreements are called as anti-competitive agreements. All such agreements entered into in contravention of the aforesaid prohibition shall be void.

Tie-in arrangement - It includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

Resale price maintenance – It includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

Question 4

(a) (i) R Ltd. wants to constitute an Audit Committee. Draft a board resolution covering the following matters [compliance with Companies Act, 2013 to be ensured].

(1) Member of the Audit Committee

(2) Chairman of the Audit Committee

(3) Any 2 functions of the said Committee

(ii) What would be the minimum likely turnover or capital of this company?

(iii) What is the role of the Audit Committee vis a vis the statutory auditor when the company wishes to engage them to perform certain engagements not restricted under Section 144? (8 Marks)

(b) XYZ Limited is an unlisted public company having a paid-up capital of twenty crore rupees as on 31st March, 2015 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2015. The total number of directors is thirteen.

Referring to the provisions of the Companies Act, 2013 answer the following:

(i) State the minimum number of independent directors that the company should appoint.

(ii) How many independent directors are to be appointed in case XYZ Limited is a listed company? (4 Marks)

(c) The Insurance Act, 1938 requires to establish Tariff Advisory Committee (TAC). In this regard, specify –

(i) Object and purpose of TAC;

(ii) Constitution of its members and Chairperson. (4 Marks)

Answer

(a) (i) AUDIT COMMITTEE – BOARD'S RESOLUTION:

"*Resolved* that pursuant to Section 177 of the Companies Act, 2013 an Audit Committee consisting of the following Directors be and is hereby constituted.

1. Mr. ---- Independent Director
2. Mr. ---- Independent Director
3. Mr. ---- Independent Director
4. Mr. ---- Independent Director
5. Mr. ---- Managing Director.
6. Mr. ---- Chief Financial Officer"

"Further resolved that the Chairman of the Audit Committee shall be elected by its members from amongst themselves and shall be an independent director'.

"Further resolved that the quorum for a meeting of the Audit committee shall be three directors (other than the Managing Director), out of which at least two must be independent directors".

"Resolved further that the Audit Committee shall perform all the functions as laid down in section 177(4) of the Companies Act, 2013 including but not limited to:

a. make the recommendation for appointment, remuneration and terms of appointment of the auditors of the company;

b. review and monitor the independence and performance of auditors of the company and the effectiveness of the audit process".

Further resolved that the Audit Committee shall review the quarterly and annual financial statements and submit the same to the Board with its recommendations if any".

(ii) Rule 6 of *the Companies (Meetings of Board and its Powers) Rules, 2014* have prescribed that the following classes of companies shall constitute Audit Committee:

(a) all public companies with a paid up capital of 10 crore rupees or more;

(b) all public companies having turnover of 100 crore rupees or more;

(c) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more.

Hence, in the present question, the likely turnover shall be ₹ 100 crore or more or capital shall be ₹ 10 crore or more.

(iii) According to section 177(5), the Audit Committee is empowered to:

(1) call for the comments of the auditors about:

(A) internal control systems,

(B) the scope of audit, including the observations of the auditors,

(C) review of financial statement before their submission to the Board,

(2) discuss any related issues with the internal and statutory auditors and the management of the company.

(b) (i) According to Rule 4 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 crores as on 31st March, 2015 and a turnover of ₹ 150 crores during the year ended 31st March, 2015. Thus, as per the *Companies (Appointment and Qualification of Directors) Rules, 2014*, XYZ Limited shall have at least 2 directors as independent directors.

(ii) According to section 149(4) of the Companies Act, 2013, every listed public company shall have at least one-third of the total number of directors as independent directors.

In the present case, XYZ Limited is a listed company and the total number of directors is 13. Hence, in this case, XYZ Limited shall have atleast 5 directors (1/3 of 13 is 4.33 rounded as 5) as independent directors.

The explanation to section 149(4) specifies that any fraction contained in such one-third numbers shall be rounded off as one.

Note: As the explanation to rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 specifies that for the purpose of the assessment of the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, their existence on the last date of latest audited financial statements shall be taken into account.

In the present case, it is mentioned that paid up capital of XYZ Limited is Rs. 20 crore on 31st March, 2015 and turnover is Rs. 150 crore during the year ended 31st March, 2015. So, it is assumed that 31st March, 2015 is the last date of latest audited financial statements.

(c) (i) Object and purpose of TAC (Tariff Advisory Committee): The Tariff Advisory Committee (TAC) is to be established as per the Insurance (Amendment) Act, 1968 to control and regulate the rates and terms offered by insurers in general insurance business. The Insurance Regulatory and Development Authority (IRDA) by notification make relations for TAC. TAC with prior approval of IRDA also eligible in framing new regulations. TAC can regulate rates but such regulation should not in

any way put the business of the insurer into jeopardy or lead to any form of discrimination. Their actions are validated by the IRDA. Before any stipulations being introduced or enhanced, views of the other party need to be heard. The Advisory Committee can seek information and other documents from the insurer and the latter has to comply with those requisitions. The assets and liabilities of the General Insurance Committee cannot ignore its duty to honour them. The Advisory Committee has a power to install regional committees. The IRDA can issue licenses to surveyors and loss assessors as per relevant provisions of IRDA Act, 1999.

(ii) Constitution of its members and Chairperson: TAC is comprised of sixteen members including the chairman and vice chairman. Ten members represent Indian companies and rest represents trust of foreign companies. The controller of insurance usually be the chairman of the TAC but with the enactment of IRDA Act 1999, chairperson of the Authority shall become the chairman of the Advisory Committee.

Question 5

(a) *International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:*

(i) Commission at the rate of five percent of the net profits to its Managing Director, Mr. Kamal.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of `50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.

(iii) The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for professional services rendered as software engineer, whenever such services are utilized.

You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals. (8 Marks)

(b) *(i) Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.*

(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company.

Examine with reference to the provisions of the Companies Act, 2013 whether MN Limited and PQ Limited can be considered as Government Company. (4 Marks)

(c) 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 Securitization 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. Referring to the provisions of the said Act, examine whether Mr. X is entitled to compensation for loss of office and also explain the effect of such takeover on certain rights of the shareholders of the company. (4 Marks)

Answer

(a) International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) Commission at the rate of 5% of the net profits to its Managing Director, Mr. Kamal: Part (i) of the second proviso to section 197(1), provides that except with the approval of the company in general meeting, the remuneration payable to any one managing director; or whole time director or manager shall not exceed 5 % of the net profits of the company and if there is more than one such director then remuneration shall not exceed 10 % of the net profits to all such directors and manager taken together.

In the present case, since the International Technologies Limited is being managed by a Managing Director, the commission at the rate of 5% of the net profit to Mr. Kamal, the Managing Director is allowed and no approval of company in general meeting is required.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of ₹ 50,000 and also commission at the rate of 1 % of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed 2 % of the net profits of the company: Part (ii) of the second proviso to section 197(1) provides that except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors nor whole time directors shall not exceed-

(A) 1% of the net profits of the company, if there is a managing or whole time director or manager;

(B) 3% of the net profits in any other case.

In the present case, the maximum remuneration allowed for directors other than managing or whole time director is 1% of the net profits of the company because the company is having a managing director also. Hence, if the company wants to fix their remuneration at not more than 2% of the net profits of the company, the approval of the company in general meeting is required.

(iii) The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for professional services rendered as software engineer, whenever such services are utilized:

(1) According to section 197(4), the remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either

(i) by the articles of the company, or

(ii) by a resolution or,

(iii) if the articles so require, by a special resolution, passed by the company in general meeting, and

(2) the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.

(3) Any remuneration for services rendered by any such director in other capacity shall not be so included if—

(i) the services rendered are of a professional nature; and

(ii) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Hence, in the present case, the additional remuneration to Mr. Bhatt, a director for professional services rendered as software engineer will not be included in the maximum managerial remuneration and is allowed but opinion of Nomination and Remuneration Committee is to be obtained.

Also, the International Technologies Limited (a listed company) shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed under the *Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014.*

(b) According to section 2(45) of the Companies Act, 2013, "Government company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

(i) The Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

In this case, MN Limited is not a Government company because the holding of the Central Government and Government of Maharashtra is 40% which is less than the 51% prescribed under the definition of Government Company. The holding of the government company in MN Limited of 20% cannot be taken into account while counting the prescribed limit of 51%.

(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company

In this case, PQ Limited is a government company as the definition of Government Company clearly specifies that a Government Company includes a company which is a subsidiary company of a Government company. Whether the subsidiary should be a wholly owned subsidiary or not is not clearly mentioned under the definition of the Government company under section 2(45).

(c) 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.

Question 6

(a) AVM Producer Company Ltd. seeks your advise on the following aspects of the working of' a Producer company under the Companies Act, 1956 :-

(i) Criteria for appointment of Secretary as also the legal position, if its financial position is unsatisfactory.

(ii) Can the Board of Directors of the company direct its member to surrender his shares to the company, if so, under what circumstances?

(iii) Provisions relating to donation to any institution, as also to a political party.

(iv) Provisions relating to investment of general reserves, as also investment in the shares of a company, other than a Producer company. (8 Marks)

(b) A company was in financial distress. They pledged certain immovable properties with a nationalised bank in the belief that their loan limits would be increased. However within 3 months, some creditors filed a petition for winding up. The management was accused of fraudulent preference.

(i) In the above context discuss fraudulent preference.

(ii) Would your answer be different if the charge was created in favour of an NBFC?

(4 Marks)

(c) The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Advise explaining the relevant provisions of the Prevention of Money Laundering Act, 2002. (4 Marks)

Answer

(a) (i) Secretary of a producer company (Section 581X of the Companies Act, 1956): Every producer company having an average annual turnover exceeding five crore

rupees in each of three consecutive financial years shall have a whole-time secretary, who possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980. If a producer company fails to comply with this, the company and every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

In any proceedings against a person in respect of an offence, under this section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of section were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.

(ii) Surrender of shares [Section 581ZD (5) of the Companies Act, 1956]: Where the Board of a producer company is satisfied that—

(a) any member has ceased to be a primary producer; or

(b) any member has failed to retain his qualifications to be a member as specified in articles, the Board shall direct the surrender of shares together with special rights, if any, to the producer company at par value or such other value as may be determined by the Board:

Provided that the Board shall not direct such surrender of shares unless the member has been served with a written notice and given an opportunity of being heard.

(iii) Donations or subscription by producer company (Section 581ZH of the Companies Act, 1956): A producer company may, by special resolution, make donation or subscription to any institution or individual for the purposes of—

(a) promoting the social and economic welfare of producer member or producers or general public; or

(b) promoting the mutual assistance principles:

Provided that the aggregate amount of all such donation and subscription in any financial year shall not exceed three per cent of the net profit of the producer company in the financial year immediately preceding the financial year in which the donation or subscription was made.

Further, no producer company shall make directly or indirectly to any political party or for any political purpose to any person any contribution or subscription or make available any facilities including personnel or material.

(iv) Investment in other companies, formation of subsidiaries, etc. (Section 581ZL): The producer company has to follow the following provisions under this section.

(1) The general reserves of any producer company shall be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government or co-operative or scheduled bank or in such other mode as may be prescribed.

(2) Any producer company may, for promotion of its objectives acquire the shares of another producer company.

(3) Any producer company may subscribe to the share capital of, or enter into any agreement or other arrangement, whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the producer company by special resolution in this behalf.

(4) Any producer company, either by itself or together with its subsidiaries, may invest, by way of subscription, purchase or otherwise, shares in any other company, other than a producer company, specified under sub-section (2), or subscription of capital under sub-section (3), for an amount not exceeding thirty per cent of the aggregate of its paid-up capital and free reserves:

Provided that a producer company may, by special resolution passed in its general meeting and with prior approval of the Central Government, invest in excess of the limits specified in this section.

(5) All investments by a producer company may be made if such investments are consistent with the objects of the producer company.

(6) The Board of a producer company may, with the previous approval of members by a special resolution, dispose of any of its investments referred to in sub-sections (3) and (4).

(7) Every producer company shall maintain a register containing particulars of all the investments, showing the names of the companies in which shares have been acquired, number and value of shares; the date of acquisition; and the manner and price at which any of the shares have been subsequently disposed off.

(8) The register referred to in sub-section (7) shall be kept at the registered office of the producer company and the same shall be open to inspection by any member who may take extracts there from.

(b) (i) Fraudulent Preference: According to the provisions of Section 531 of the Companies Act, 1956, all transfers of property, movable or immovable, made by delivery of goods or payment of money etc., if made by an insolvent person within 3 months before the presentation of insolvency petition, would be held to be a fraudulent preference of its creditors and would be invalid. Similarly, in the case of a company all such transfers, if made within 6 months before the commencement of its winding-up, would be deemed to be a fraudulent preference of its creditors, and

would be invalid.

In the present case, the company pledged certain immovable properties with a nationalised bank in the belief that their loan limits would be increased. However within 3 months, some creditors filed a petition for winding up. The management was accused of fraudulent preference.

For the purpose of proving a fraudulent preference, two things need be shown, viz.:

(a) that in the case of a winding-up by or subject to the supervision of the Court, the transaction took place within 6 months before the presentation of the petition and in the case of voluntary winding-up, the transaction took place within 6 months of passing of resolution for winding-up; and

(b) that the main motive in the mind of the company, acting through its directors, was to prefer one creditor to the other.

Thus, to prove fraudulent preference, it shall have to be established that the dominant motive was to commit an act of dishonesty. To find a case of fraudulent preference, the dominant motive in the mind of the company as represented by the directors or the general body of shareholders, as the case may be, must be to prefer the creditors. The dominant motive attending the transaction has to be ascertained, and if it tainted with an element of dishonesty, questions of fraud arise. In validating such payment the question is not whether the company is or is not damaged by the payment, but whether it was made with a bona fide view to assisting the company.

Thus, pledging certain immovable properties with a nationalised bank is not a fraudulent preference because it has been done in the good faith so that their loan limits would be increased. It is a transaction in good faith.

(ii) The answer would be the same if the charge was created in favour of an NBFC.

(c) Section 25 of 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.

Question 7

Answer any four of the following :

(a) *DD Ltd. is a listed company and it has been served with notice for appointment of small shareholders' director. Referring to the provisions of the Companies Act, 2013, advise on the following:*

  (i) *Define the expression 'small shareholder' and specify the number of small shareholders who may serve notice on the company for a director representing them.*

  (ii) *Is it possible to appoint a person who does not hold any share in the company, as small shareholders' director ?*

  (iii) *What is the tenure of small shareholders' director and whether he can be re-appointed as such, after expiry of his tenure? Also state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholders' director.* *(4 Marks)*

(b) *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. Explain the legal position in this regard under the Companies Act, 2013.*

  Also state the offences under the Companies Act, 2013 which are cognizable and which are non-cognizable. *(4 Marks)*

(c) *Explain the provisions of the Companies Act, 1956 relating to preparation and filing of Statement of Affairs (SA) in case of winding of a company by the Court, with regard to the following aspects:*

  (i) *Who is required to prepare and file SA and whether cost and expenses incurred in preparing SA are recoverable?*

  (ii) *Contents of SA and the period within which the same is required to be submitted and to whom? Also state about delay in filing SA and upto what period the same is allowed.* *(4 Marks)*

(d) *How will you interpret the definitions in a statute, if the following words are used in a statute ?*

  (i) Means, (ii) includes

Give one illustration for each of the above from statutes you are familiar with. (4 Marks)

(e) Galilio Ltd. is a foreign company in Germany and it established a place of business in Mumbai. Explain the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements, as also the documents to be attached alongwith the financial statements by the foreign company.

(4 Marks)

Answer

(a) (i) According to section 151 of the Companies Act, 2013, a listed company may have one director elected by small shareholders in such manner and on such terms and conditions as may be prescribed.

Here, "Small Shareholders" means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed.

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 shareholders.

(ii) The small shareholders intending to propose a person as a candidate for the post of small shareholders' 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.

(iii) The tenure of small shareholders' director shall not exceed a period of 3 consecutive years and on the expiry of the tenure, such director shall not be eligible for re-appointment.

A small shareholders' director shall not, for a period of 3 years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

(b) 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 -

(a) The Registrar,

(b) A shareholder of the company, or

(c) 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.

(c) (i) Persons required to prepare and file Statement of Affairs and whether cost and expenses incurred in preparing SA are recoverable: Where winding- up order has been made or the Official Liquidator has been appointed as provisional liquidator by the Court, a statement as regards the affairs of the company in the prescribed form shall be delivered to the Official Liquidator. The aforementioned statement is required to be made and verified by one or more of the directors and by the person who, at the date of winding-up order or the appointment of the provisional liquidator, as the case may be, the manager, secretary or other chief officer of the company. Also, it may be made by the following persons if the Official Liquidator so requires, subject to the directions of the Court;

(1) who are or have been officers of the company;

(2) who have participated in the formation of the company at any time within one year before the relevant date;

(3) who are in the employment of the company or have been so within the said year and are in the opinion of the Official Liquidator, capable of giving the information required;

(4) who are or have been within the said year, officers of, or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

The persons, preparing the statement and affidavit shall be allowed such costs and expenses incurred in connection therewith as the Official Liquidator may deem reasonable, subject to an appeal to the Court.

(ii) Contents of SA and the period within which the same is required to be submitted and to whom, delay in filing SA and period upto which the same is allowed: Such a statement shall contain particulars of

(1) the assets of the company stating separately the cash balance in hand and at the bank, negotiable securities;

(2) its debts and liabilities;

(3) the names, residence and occupations of the creditors (secured debts being segregated from those considered unsecured) and in the case of secured debts the particulars of the securities given whether by the company or an officer thereof, their value and the dates on which they were given;

(4) the debts due to the company and the names, and residences, and occupations of the persons from whom they are due and the amount likely to be realized on account thereof and

(5) such further or other information as may be prescribed or as the Official Liquidator may require.

The above mentioned statement is required to be submitted within 21 days of the winding- up order of the appointment of the provisional liquidator, as the case may be, or within such extended time, not exceeding three months, as may be fixed by the Official Liquidator or the Court for special reasons.

The above answer is based on the provisions of section 454 of the Companies Act, 1956.

(d) Interpretation of the words "Means" and "Includes" in the definitions- The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has

extensive meaning which also includes the meaning assigned to it in the definition section.

Example-

Definition of Director [section 2(34) of the Companies Act, 2013]- Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.

Definition of Whole time director [Section 2(94) of the Companies Act, 2013]- Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director.

(e) Preparation and filing of financial statements by a foreign company:

According to section 381 of the Companies Act, 2013:

(i) Every foreign company shall, in every calendar year,—

(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and

(b) deliver a copy of those documents to the Registrar.

According to the *Companies (Registration of Foreign Companies) Rules, 2014,* every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including:

(1) documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.

(2) The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.

(ii) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) of section 381(1) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in notification in that behalf.

(iii) If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381 (2)]

(iv) Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made.

According to the *Companies (Registration of Foreign Companies) Rules, 2014,* every foreign company shall file with the Registrar, along with the financial statement, in Form FC3 with such fee as provided under *Companies (Registration Offices and Fees) Rules, 2014* a list of all the places of business established by the foreign company in India as on the date of balance sheet.

According to the *Companies (Registration of Foreign Companies) Rules, 2014*, if any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, if it does not have other place of business in India.

(v) According to the *Companies (Registration of Foreign Companies) Rules, 2014*,

(a) Further, every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely:-

(1) Statement of related party transaction

(2) Statement of repatriation of profits

(3) Statement of transfer of funds (including dividends, if any)

The above statements shall include such other particulars as are prescribed in the *Companies (Registration of Foreign Companies) Rules, 2014*.

(b) All these documents shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company to which the documents relate.