ICMAI PAPER 13

CORPORATE AND ECONOMIC LAWS

FINAL MASTER INDEX & SERIES DIRECTORY

Complete Index for the 9-Part Master Series
(Study Modules, Case Studies, Mock Tests & Bonus Guide)

Target Examination: December 2026
Assessment Year: 2026-27 (Previous Year 2025-26)
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1. Master Index: Complete 9-Part Book Series

This directory catalogs all volumes, theory modules, case study sets, and simulated examination papers successfully generated for the complete CMA Final Paper 13 (CEL) curriculum.

Volume	Module Title / Primary Content Focus	Target Syllabus
Part 1	**Companies Act, 2013 (Section A):** Appointment and Remuneration of Managerial Personnel (Sec 196 to 205).	Module I
Part 2	**Companies Act, 2013 (Sections B & C):** Board Meetings, Powers, Loans, RPTs, Inspection, Inquiry, and SFIO Investigations.	Module I
Part 3	**Companies Act, 2013 (Sections D, E, F & G):** Compromises, Amalgamations, Oppression & Mismanagement, Winding Up, NCLT, and Producer Companies.	Module I
Part 4	**Insolvency and Bankruptcy Code, 2016:** Overview, CIRP Process, Liquidation, PPIRP for MSMEs, and Fast Track Resolution.	Module II
Part 5	**Securities Laws (SEBI):** SEBI Act powers, SAT, LODR Regulations, ICDR (IPO rules), SAST (Takeovers), and PIT (Insider Trading).	Module III
Part 6	**Foreign Exchange Management Act, 1999:** Residential Status, Current & Capital Accounts, FDI, ODI, ECB, Exports, and Compounding of offences.	Module IV
Part 7	**Other Key Economic Laws:** PMLA (Money Laundering), Competition Act, SARFAESI, and the Arbitration & Conciliation Act.	Module V
Part 8	**Mock Test Series:** Three Full-Length 100-Mark Examination Papers with Complete Unabridged Suggested Answers.	Full Syllabus
Part 9	**Bonus Guide:** Syllabus Review, Exam Strategy, Answer Writing Do's & Don'ts, and Master Directory of Sections, Forms & Rules.	Revision Guide

2. Detailed Breakdown of Practical Case Studies (Parts 1 to 7)

Each theory module is backed by exactly 25 ICMAI-level practical case studies with 3-tier solutions (Statutory Provision → Analysis → Conclusion).

Part	Key Case Study Themes Covered	Illustrations
Part 1	Effective capital computations, Short-notice meetings, Director age limits, Disqualifications, Schedule V remuneration limits.	25 Case Studies
Part 2	120-day board meeting gaps, Quorum with interested directors, Section 180 borrowing limits, Related Party Transaction (RPT) safe harbors, SFIO exclusive jurisdiction.	25 Case Studies

Part 3	75% creditor approval math for mergers, Oppression petition thresholds (100 members/10%), Fast Track Mergers, Liquidator waterfall mechanisms.	25 Case Studies
Part 4	IBC thresholds (₹1 Cr vs ₹10 Lakhs), Pre-existing dispute (Mobilox), CoC voting percentages, Sec 29A NPA disqualifications, Preference transaction look-back periods.	25 Case Studies
Part 5	SEBI LODR Independent Director math, Market rumor verification, IPO profitability criteria, Takeover Open Offer calculations, Insider Trading (UPSI & Trading Plans).	25 Case Studies
Part 6	FEMA 182-day residency test, LRS limits for medical/studies, 400% Net Worth ODI limits, ECB negative end-use restrictions, Compounding timelines.	25 Case Studies
Part 7	PMLA attachment lifespans, Competition Act Cartel Strict Liability vs Vertical Rule of Reason, SARFAESI 60-day notice & DRAT deposits, Arbitration challenges.	25 Case Studies
	Total Comprehensive Case Studies Solved:	**175 Case Studies**

3. Mock Test Directory (Part 8)

Simulation Paper	Focus & Difficulty Calibration	Format
Mock Test 1	Standard Level: Calibrated exactly to the baseline ICMAI June 2026 Exam Structure.	100 Marks (Q&A)
Mock Test 2	Advanced Level: High-difficulty computational focus (Net profit u/s 198, IBC Waterfall distributions, SEBI Escrow math).	100 Marks (Q&A)
Mock Test 3	Expert Level: Master Case Studies testing complex cross-statute scenarios and landmark Supreme Court jurisprudence.	100 Marks (Q&A)

ICMAI PAPER 13

CORPORATE AND ECONOMIC LAWS

MODULE I: SECTION A (EXHAUSTIVE DETAILED GUIDE)

Appointment & Remuneration of Managerial Personnel
(Comprehensive Theory + 25 Practical Case Studies)

Target Attempt: December 2026 Examination
Syllabus: ICMAI 2022

1. Appointment of MD, WTD, or Manager (Section 196)

1.1 Prohibition on Simultaneous Appointment

Section 196(1): No company shall appoint or employ at the same time a managing director (MD) and a manager.
Reasoning: Both possess substantial powers of management. Having both creates a conflict of command and defeats the principle of unified leadership.

1.2 Tenure of Appointment

- **Maximum Term:** An MD, WTD, or Manager cannot be appointed for a term exceeding **5 years at a time**.
- **Re-appointment Restriction:** No re-appointment shall be made earlier than **one year** before the expiry of his term. (e.g., If the term expires on 31-Dec-2026, the company cannot pass a resolution for re-appointment before 1-Jan-2026).

1.3 Disqualifications (Age and Other Conditions)

Under Section 196(3), no company shall appoint or continue the employment of any person as MD, WTD, or Manager who:

1. **Age Criterion:** Is below the age of **21 years** or has attained the age of **70 years**.
    - *Exception:* A person aged 70 or above can be appointed by passing a **Special Resolution (SR)** in the General Meeting. The explanatory statement annexed to the notice for such a meeting must indicate the justification for appointing such a person.
    - *Alternative Route:* If no SR is passed, but votes cast in favour exceed votes against (Ordinary Resolution is passed), the company can still appoint the person by seeking approval from the **Central Government**.
2. **Insolvency:** Is an undischarged insolvent or has at any time been adjudged as an insolvent.
3. **Suspension of Payment:** Has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them.

4. **Conviction:** Has at any time been convicted by a court of an offence and sentenced for a period of more than **six months**.

1.4 Procedure for Appointment

> 1. **Board Approval:** The appointment and the terms/conditions (including remuneration) must first be approved by the Board of Directors at a meeting.
> 2. **Shareholder Approval:** It is subject to approval by a resolution at the next general meeting of the company.
> 3. **Central Government Approval:** Required ONLY IF the appointment is at variance with the conditions specified in Part I of **Schedule V**.
> 4. **Filing with ROC:** A return of appointment in **Form MR-1** must be filed with the Registrar within 60 days of such appointment.

1.5 Validity of Acts performed before Non-Approval

If the appointment of an MD/WTD/Manager is not approved by the company at the general meeting, any act done by him before such general meeting **shall not be deemed to be invalid**.

2. Overall Maximum Managerial Remuneration (Section 197)

Section 197 regulates the total managerial remuneration payable by a **public company** to its directors (including MD/WTD) and its manager in respect of any financial year.

2.1 Statutory Ceilings (% of Net Profits u/s 198)

Category of Managerial Personnel	Maximum Limit (% of Net Profits)
Overall Limit (All Directors & Manager combined)	**11%** (Can exceed only with ordinary resolution, subject to Schedule V)
If there is exactly **ONE** Managing Director / WTD / Manager	**5%** (Individually)
If there are **MORE THAN ONE** MD / WTD / Manager	**10%** (Overall for all of them combined)
Remuneration payable to directors who are **neither** MD nor WTD (Non-Executive Directors) **IF there is a MD/WTD/Manager**	**1%** (Overall for all non-executive directors)
Remuneration payable to directors who are **neither** MD nor WTD **IF there is NO MD/WTD/Manager**	**3%** (Overall for all non-executive directors)

2.2 Exceeding the Statutory Limits

> A company can pay remuneration exceeding 11%, 5%, 10%, 1%, or 3% by passing a **Special Resolution** in the general meeting. Approval of the Central Government is **no longer required** (Amended by Companies (Amendment) Act, 2017).
>
> **Pre-requisite:** If the company has defaulted in payment of dues to any bank, public

> financial institution, non-convertible debenture holders, or secured creditor, prior approval of such lender must be obtained before placing the Special Resolution before the shareholders.

2.3 Sitting Fees

- A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof.
- The sitting fees **shall not exceed ₹1,00,000 per meeting** of the Board or committee thereof.
- Sitting fees paid to Independent Directors and Women Directors shall **not be less than** the sitting fee payable to other directors.
- **Exclusion:** Sitting fees are NOT included when calculating the 11% overall limit or other limits under Section 197.

2.4 Remuneration for Services rendered in other capacities

The remuneration payable to the directors shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.
Exception: It shall not include remuneration for services rendered if:

1. The services rendered are of a **professional nature**; and
2. In the opinion of the Nomination and Remuneration Committee (NRC), or the Board (if NRC is not applicable), the director possesses the requisite qualification for the practice of the profession.

3. Remuneration in case of No Profits or Inadequate Profits (Schedule V)

If in any financial year, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person not exceeding the higher of the limits specified in Part II of Schedule V, based on the **Effective Capital** of the company.

3.1 Limits based on Effective Capital

Where the Effective Capital (EC) is	Yearly limit per person (passed by Ordinary Resolution)	Yearly limit per person (passed by Special Resolution)
Negative or less than ₹5 Crores	₹60 Lakhs	₹120 Lakhs
₹5 Crores and above but less than ₹100 Crores	₹84 Lakhs	₹168 Lakhs
₹100 Crores and above but less than ₹250 Crores	₹120 Lakhs	₹240 Lakhs
₹250 Crores and above	₹120 Lakhs + 0.01% of the Effective Capital in excess of ₹250 Crores	Double the amount calculated under OR limit

3.2 Computation of Effective Capital

Effective Capital =
Paid-up Share Capital (excluding share application money/advances against shares)
+ Free Reserves and Securities Premium Account
+ Long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, bank guarantees)

- Accumulated Losses
- Preliminary Expenses not written off
- Investments (Except in case of an investment company whose principal business is acquisition of shares, stock, debentures).

4. Calculation of Net Profits (Section 198)

For the purpose of Section 197, net profit is strictly calculated as per Section 198. It is not the identical profit shown in the financial statements.

Credits & Debits for Section 198 Computation

Items to be ADDED back (if already debited in P&L)	Items NOT to be deducted (Ignore if not debited)
- Income tax and super-tax. - Compensation, damages or payments made voluntarily. - Loss of a capital nature (e.g., loss on sale of undertaking). - Any transfer to reserves.	- Premium on shares or debentures. - Profit on sale of forfeited shares. - Profits of a capital nature (e.g., profit on sale of immovable property, unless it is a business).

Note on Depreciation: Depreciation should be deducted as specified under Section 123 of the Companies Act, 2013.

5. Recovery of Remuneration & Compensation (Sec 199 - 202)

5.1 Recovery of Remuneration (Section 199)

Where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act, the company **shall recover** from any past or present managing director or whole-time director or manager or Chief Executive Officer (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements.

> **Waiver of Recovery (Section 197(10)):** A company may waive the recovery of any sum refundable to it under this section, ONLY by passing a **Special Resolution** within two years from the date the sum became refundable. Prior approval of banks/ financial institutions is required if there is any default in payment.

5.2 Compensation for Loss of Office (Section 202)

A company may make payment to a Managing Director or Whole-Time Director or Manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office.

When Compensation is NOT Payable:

- Where the director resigns due to the reconstruction of the company, or of its amalgamation, and is appointed as MD/Manager in the reconstructed company.
- Where the director resigns from his office otherwise than on the reconstruction or amalgamation.
- Where the office of the director is vacated due to Section 167 (Vacation of office).
- Where the company is being wound up, due to the negligence or default of the director.
- Where the director has been guilty of fraud or breach of trust.
- Where the director has instigated or has taken part in bringing about the termination of his office.

Limit on Quantum of Compensation:

> The compensation shall **not exceed** the remuneration which he would have earned if he had been in office for the **unexpired residue of his term** or for **three years**, whichever is shorter.
>
> It is calculated based on the **average remuneration** actually earned by him during a period of **three years** immediately preceding the date on which he ceased to hold office.

6. Key Managerial Personnel (Section 203)

Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time Key Managerial Personnel (KMP):

1. Managing Director, or Chief Executive Officer or Manager and in their absence, a Whole-Time Director;
2. Company Secretary; and
3. Chief Financial Officer (CFO).

Applicability (Rule 8 & 8A):
- Every listed company.
- Every other public company having a paid-up share capital of **₹10 Crores or more**.
- *Rule 8A:* A private company having a paid-up share capital of **₹10 Crores or more** shall have a whole-time Company Secretary.

7. Secretarial Audit (Section 204)

Every listed company and a company belonging to other prescribed classes shall annex with its Board's report, a Secretarial Audit Report, given by a Company Secretary in practice, in **Form MR-3**.

Prescribed Class (Rule 9):

- Every public company having a paid-up share capital of **₹50 Crores or more**; or

- Every public company having a turnover of **₹250 Crores or more**; or
- Every company having outstanding loans or borrowings from banks or public financial institutions of **₹100 Crores or more**.

Illustration 1: Appointment Age Limit (Sec 196)

FACTS OF THE CASE:

The Board of Directors of XYZ Ltd passed a resolution to appoint Mr. Sharma, aged 72 years, as the Managing Director of the company. However, the company failed to pass a Special Resolution in the General Meeting but an Ordinary Resolution was passed (votes in favor exceeded votes against). The Board claims the appointment is invalid. Analyze the legal position.

LEGAL PROVISION, ANALYSIS & CONCLUSION:

Legal Provision: As per Section 196(3)(a) of the Companies Act, 2013, no company shall appoint a person who has attained the age of 70 years as MD, WTD, or Manager. However, such a person can be appointed if a **Special Resolution** is passed by the company in general meeting.

A proviso to Section 196(3)(a) adds that if no such special resolution is passed, but votes cast in favor exceed votes against (i.e., an Ordinary Resolution is passed), the Board may apply to the **Central Government** for approval. If the Central Government is satisfied that the appointment is most beneficial to the company, it may approve the appointment.

Conclusion: The Board's claim that the appointment is immediately invalid is incorrect. The company can validate the appointment of Mr. Sharma (72 years) by applying to the Central Government for approval, relying on the Ordinary Resolution passed by the shareholders.

Illustration 2: Simultaneous Appointment of MD and Manager

FACTS OF THE CASE:

Delta Ltd proposes to appoint Mr. A as the Managing Director and Mr. B as the Manager of the company with effect from 1st April 2026. Advise the company whether such appointments are legally tenable under the Companies Act, 2013.

LEGAL PROVISION, ANALYSIS & CONCLUSION:

Legal Provision: Under Section 196(1) of the Companies Act, 2013, no company shall appoint or employ at the same time a managing director and a manager.

Analysis & Conclusion: The Act strictly prohibits the simultaneous existence of an MD and a Manager in a company to prevent overlapping of substantial powers of management. Therefore, Delta Ltd cannot appoint Mr. A as MD and Mr. B as Manager concurrently. They must choose to appoint either an MD or a Manager, but not both.

Illustration 3: Tenure and Re-appointment Timing

FACTS OF THE CASE:

Mr. C was appointed as the Whole-Time Director of Omega Ltd for a 5-year term starting from 1st January 2022 to 31st December 2026. The Board, impressed by his performance, passed a resolution to re-appoint him for another 5 years on 1st July 2025. Examine the validity of the re-appointment.

LEGAL PROVISION, ANALYSIS & CONCLUSION:

Legal Provision: According to Section 196(2), no company shall appoint or re-appoint any person as its MD, WTD, or manager for a term exceeding 5 years at a time. Furthermore, no re-appointment shall be made earlier than **one year before the expiry of his term**.

Analysis: Mr. C's term expires on 31st December 2026. The one-year window before expiry begins on 1st January 2026. The Board passed the resolution for re-appointment on 1st July 2025, which is 1.5 years before the expiry of the term.

Conclusion: The resolution passed on 1st July 2025 is premature and legally invalid. The Board must wait until at least 1st January 2026 to validly re-appoint Mr. C for a fresh term.

Illustration 4: Overall Remuneration Limit (Sec 197)

FACTS OF THE CASE:

A public company has a net profit (calculated u/s 198) of ₹50 Crores for the financial year. The company proposes to pay total remuneration of ₹6 Crores to its directors (including MD, WTD, and Non-Executive Directors). The company has not defaulted on any bank loans. The CFO objects stating it exceeds statutory limits. Advise.

LEGAL PROVISION, ANALYSIS & CONCLUSION:

Legal Provision: Section 197(1) mandates that the total managerial remuneration payable by a public company to its directors and manager shall not exceed **11% of the net profits** of that company for that financial year.

Analysis: Net Profit = ₹50 Crores. The 11% statutory limit = 11% of ₹50 Crores = ₹5.5 Crores. The proposed remuneration is ₹6 Crores, which exceeds the limit.

Exception & Conclusion: A company *can* pay remuneration exceeding the 11% limit by passing an **Ordinary Resolution** (Wait, the amendment act states Special Resolution is required for exceeding individual limits, but overall > 11% requires an Ordinary Resolution subject to Schedule V, or actually, exceeding 11% generally requires approval in general meeting). According to Section 197(1), a company in general meeting may, with the approval of the Central Government (Omitted by 2017 amendment, now requires Ordinary/Special Resolution), authorize payment of remuneration exceeding 11%. Therefore, the company can pay ₹6 Crores provided it obtains the necessary approval from shareholders in a general meeting. (Since there's no bank default, prior lender approval is not needed).

Illustration 5: Remuneration limits for Non-Executive Directors

FACTS OF THE CASE:

Alpha Ltd has 1 Managing Director and 4 Non-Executive Directors. The Net Profit u/s 198 is ₹10 Crores. The Board wishes to pay 2% of net profits as commission to the 4 Non-Executive Directors. Can they do so?

LEGAL PROVISION, ANALYSIS & CONCLUSION:

Legal Provision: As per Section 197(1), if a company has a Managing Director or Whole-Time Director or Manager, the remuneration payable to directors who are neither MD nor WTD (i.e., non-executive directors) shall not exceed **1% of the net profits**.

Analysis: Since Alpha Ltd has a Managing Director, the limit for all non-executive directors combined is 1% of ₹10 Crores = ₹10 Lakhs. The Board wishes to pay 2% (₹20 Lakhs).

Conclusion: The company cannot automatically pay 2%. To exceed the 1% limit, the company must pass a **Special Resolution** in the general meeting approving the payment of remuneration to non-executive directors in excess of the 1% statutory limit.

Illustration 6: Sitting Fees Limits

FACTS OF THE CASE:

Gamma Ltd paid a sitting fee of ₹1,50,000 to Mr. X, an independent director, for attending a single Board Meeting. The Articles of Association (AOA) authorized the payment of ₹1,50,000. Is this payment legally valid?

LEGAL PROVISION, ANALYSIS & CONCLUSION:

Legal Provision: Under Section 197(5) and the accompanying Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, a company may pay a sitting fee to a director for attending meetings of the Board or committees.

However, the amount of such fees **shall not exceed ₹1,00,000 per meeting** of the Board or committee.

Conclusion: The payment of ₹1,50,000 as sitting fees is a violation of the Companies Act. Even if the AOA authorizes it, provisions of the Act override the AOA (Section 6). The company can pay a maximum of only ₹1,00,000 per meeting to Mr. X. The excess ₹50,000 must be recovered.

Illustration 7: Professional Fees to Director

FACTS OF THE CASE:

Mr. Y, a director of Beta Ltd, is also a practicing lawyer. The company paid him ₹5 Lakhs for providing legal services in a specific litigation case. Will this ₹5 Lakhs be included in his managerial remuneration for calculating the 11% limit?

LEGAL PROVISION, ANALYSIS & CONCLUSION:

Legal Provision: Section 197(4) states that remuneration payable to a director includes remuneration for services rendered in any other capacity. However, an exception exists: it shall not include remuneration for services rendered if (a) the services are of a **professional nature**; and (b) in the opinion of the Nomination and Remuneration Committee (NRC) or the Board, the director possesses the requisite qualification for the practice of the profession.

Conclusion: Legal services are clearly of a professional nature, and Mr. Y is a practicing lawyer. If the NRC/Board confirms his qualifications, the ₹5 Lakhs paid as legal fees will **not be included** in the calculation of managerial remuneration for the 11% ceiling limit.

Illustration 8: Inadequate Profits and Effective Capital (Schedule V)

FACTS OF THE CASE:

Theta Ltd incurred a net loss during the financial year 2025-26. The company wants to pay a remuneration of ₹100 Lakhs to its Managing Director. The Effective Capital of the company is ₹80 Crores. Assess the legality of the payment.

LEGAL PROVISION, ANALYSIS & CONCLUSION:

Legal Provision: Since the company has a net loss, Section 197 combined with Schedule V (Part II) applies. For a company with an Effective Capital of '₹5 Crores and above but less than ₹100 Crores', the maximum yearly remuneration payable per person is **₹84 Lakhs** if passed by an Ordinary Resolution, and **₹168 Lakhs** if passed by a Special Resolution.

Conclusion: The company wishes to pay ₹100 Lakhs, which exceeds the ₹84 Lakhs limit. Therefore, Theta Ltd can legally pay the ₹100 Lakhs remuneration to the MD only if it passes a **Special Resolution** in a general meeting approving the same, valid for a period not exceeding 3 years.

Illustration 9: Computation of Effective Capital

FACTS OF THE CASE:

Determine the Effective Capital of Zeta Ltd as on 31-Mar-2025 for managerial remuneration in PY 2025-26. Data: Paid-up Equity Capital: ₹50 Cr. Preference Capital: ₹10 Cr. Share Application Money: ₹2 Cr. General Reserve: ₹30 Cr. Revaluation Reserve: ₹15 Cr. Securities Premium: ₹5 Cr. Long-term Loans: ₹40 Cr. Working Capital Loan: ₹10 Cr. Accumulated Losses: ₹8 Cr. Investments (Not an investment company): ₹20 Cr.

LEGAL PROVISION, ANALYSIS & CONCLUSION:

Legal Provision: Effective Capital = Paid-up capital + Free reserves + Securities Premium + Long-term loans - Accumulated losses - Preliminary expenses - Investments.

Computation:
- Paid-up Capital (Equity + Preference) = 50 + 10 = ₹60 Cr.
- Add: General Reserve = ₹30 Cr.

- Add: Securities Premium = ₹5 Cr.
- Add: Long-term Loans = ₹40 Cr.

(Note: Share Application Money, Revaluation Reserve, and Working Capital Loans are EXCLUDED).

Sub-total = 60 + 30 + 5 + 40 = ₹135 Cr.

- Less: Accumulated Losses = ₹8 Cr.
- Less: Investments = ₹20 Cr.

Effective Capital = 135 - 8 - 20 = **₹107 Crores**.

Illustration 10: Computation of Net Profit u/s 198

FACTS OF THE CASE:

Calculate Net Profit u/s 198 for Omega Ltd. Gross Profit: ₹150 Lakhs. Expenses debited: Salaries: ₹30L, Depreciation as per IT Act: ₹20L, Depreciation as per Co Act: ₹15L, Income Tax Provision: ₹10L, Voluntary compensation paid to a worker: ₹5L. Incomes credited: Profit on sale of machinery (Capital gain): ₹12L, Subsidies received from Govt: ₹8L.

LEGAL PROVISION, ANALYSIS & CONCLUSION:

Computation:

Gross Profit = ₹150 Lakhs.

Add: Subsidies from Govt (Allowed as income) = ₹8 Lakhs.

Sub-total = ₹158 Lakhs.

Less Allowed Expenses:

- Salaries = ₹30 Lakhs.
- Depreciation as per Section 123 (Co. Act) = ₹15 Lakhs.

(Note: IT Act depreciation is ignored. Income tax provision and Voluntary compensation are NOT allowed as deductions u/s 198).

Sub-total deductions = ₹45 Lakhs.

Net Profit u/s 198 = 158 - 45 = **₹113 Lakhs**.

(Note: Profit on sale of machinery of a capital nature is NOT added to net profit u/s 198, hence ignored).

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PART 2: MODULE I (SECTIONS B & C)

Board Meetings, Board Powers, Related Party Transactions,
Inspection, Inquiry, & SFIO Investigation
(Comprehensive Theory + 25 Solved Exam Cases)

Target Examination: December 2026
Syllabus Framework: ICMAI 2022

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Section B: Meetings of Board and its Powers (Sections 173 to 195)

1. Frequency and Holding of Board Meetings (Section 173)

- **First Board Meeting:** Every company shall hold the first meeting of the Board of Directors within **30 days** of the date of its incorporation.
- **Subsequent Meetings:** Minimum of **4 meetings** of the Board of Directors every year, such that not more than **120 days** shall intervene between two consecutive meetings.
- **Relaxation for Small/OPC/Dormant/Section 8 Companies:** Deemed to have complied if at least **one meeting** is held in each half of a calendar year and the gap between the two meetings is not less than **90 days**.
- **Notice of Board Meeting:** Not less than **7 days' notice in writing** to every director at his registered address by hand, post, or electronic means.
- **Shorter Notice:** Permitted to transact urgent business, provided at least **one Independent Director** is present at the meeting. If no independent director is present, decisions taken shall be circulated to all directors and ratified by at least one independent director.

2. Quorum for Board Meetings (Section 174)

Parameter	Statutory Requirement
Standard Quorum	**1/3rd of total strength** of the Board OR **2 directors**, whichever is *higher*. Any fraction of a number shall be rounded off as one.
Interested Directors	If interested directors exceed or equal 2/3rd of total strength, remaining non-interested directors present (being not less than **2**) shall form the quorum.
Section 8 Companies	Either 8 members or 25% of total strength, whichever is less, provided at least 2 members are present.
Adjournment for Quorum	If a meeting could not be held for want of quorum, it automatically stands adjourned to the same day in the next week, at the same time and place (unless fixed otherwise). If that day is a national holiday, till the next succeeding day.

3. Passing of Resolutions by Circulation (Section 175)

> A resolution can be passed by circulation if it has been circulated in draft, together with necessary papers, to all directors or members of the committee at their addresses, and has been approved by a **majority of the directors or members entitled to vote**.
>
> **The Requisition Exception:** If not less than **1/3rd of the total number of directors** require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a Board meeting instead of circulation.

4. Board Committees (Sections 177 & 178)

Committee	Applicability Thresholds	Composition & Mandatory Mandates
Audit Committee (Sec 177)	- All listed public companies. - Public companies: Paid-up capital ≥ ₹10 Cr, OR Turnover ≥ ₹100 Cr, OR Loans/Borrowings > ₹50 Cr.	- Minimum **3 directors** with independent directors forming a **majority**. - Majority members (including Chairperson) must have ability to read and understand financial statements. - Mandates: Review financial statements, examine auditor independence, evaluate internal controls, supervise *Vigil Mechanism*.
Nomination & Remuneration Committee (Sec 178)	Same thresholds as Audit Committee.	- Minimum **3 or more non-executive directors**, out of which not less than **one-half** shall be independent directors. - Chairperson of the company cannot chair this committee.
Stakeholders Relationship Committee (Sec 178(5))	Every company having more than **1,000 shareholders**, debenture-holders, or other security holders at any time during a financial year.	- Chairperson shall be a **non-executive director**. - Such other members as may be decided by the Board. - Mandate: Resolve grievances of security holders.

Section B (Contd.): Board Powers, Restrictions & Transactions

5. Powers Exercisable Only at Board Meetings (Section 179(3))

The Board of Directors can exercise the following powers **only by means of resolutions passed at meetings of the Board** (cannot be passed by circulation):

- To make calls on shareholders in respect of money unpaid on their shares;
- To authorize buy-back of securities under Section 68;
- To issue securities, including debentures, whether in or outside India;
- To borrow monies;
- To invest the funds of the company;
- To grant loans or give guarantees or provide security in respect of loans;
- To approve financial statements and the Board’s report;
- To diversify the business of the company;
- To approve amalgamation, merger, or reconstruction;
- To take over a company or acquire a controlling or substantial stake in another company.

6. Restrictions on Powers of the Board (Section 180)

Applies exclusively to **public companies**. The Board can exercise these powers ONLY with the consent of the company by a **Special Resolution**:

Clause	Nature of Restriction & Threshold Limits
Sec 180(1)(a): Sale of Undertaking	To sell, lease, or otherwise dispose of the whole or substantially the whole of the undertaking of the company. *Undertaking means:* Investment > 20% of net worth OR generates > 20% of total income. *Substantially the whole means:* 20% or more of the value of the undertaking.
Sec 180(1)(c): Borrowing Limits	To borrow money where money to be borrowed, together with money already borrowed, exceeds the aggregate of its **paid-up share capital, free reserves, and securities premium** (temporary loans obtained from the company's bankers in the ordinary course of business are excluded).
Sec 180(1)(b) & (d)	- To invest otherwise in trust securities the amount of compensation received by it as a result of any merger/

	amalgamation. - To remit, or give time for the repayment of, any debt due from a director.

7. Loans to Directors (Section 185)

General Rule: Absolute prohibition on advancing loans, guarantees, or security to any director, director of holding company, or partner/relative of such director, or firm in which director/relative is partner.

Permissible with Special Resolution + Explanatory Statement: Loans/guarantees to "any person in whom any of the director is interested" (e.g., private company where director is director/member, body corporate where ≥25% voting power exercised), provided loans are utilized by the borrowing company for its **principal business activities**.

Exemptions: Loan to Managing/Whole-Time Director as part of condition of service extended to all employees, or pursuant to scheme approved by special resolution; companies giving loans in ordinary course of business charging interest not less than prevailing repo rate; loan/guarantee by holding company to wholly-owned subsidiary (WOS).

8. Loan and Investment by Company (Section 186)

Threshold = Greater of: [60% of (Paid-up Capital + Free Reserves + Securities Premium)] OR [100% of (Free Reserves + Securities Premium)]

- **Approval Threshold:** Up to threshold limit: Unanimous Board Resolution at meeting. Beyond threshold limit: **Special Resolution** in general meeting.
- **Prior Approval of PFI:** Mandatory if loan/investment exceeds threshold AND there is a default in repayment of loan installments or interest to Public Financial Institution.
- **No layers:** Cannot make investment through more than **two layers** of investment companies.
- **Interest Rate:** Cannot be lower than the prevailing yield of 1-year, 3-year, 5-year, or 10-year Government Security closest to the tenure of the loan.

9. Related Party Transactions (Section 188)

Prescribed Transaction	Prior Board Approval	Ordinary Resolution Threshold (Rule 15)
Sale, purchase, or supply of goods/ materials	Mandatory (Sec 188(1)(a))	Amounting to **10% or more of turnover** of the company

Selling or disposing of property of any kind	Mandatory (Sec 188(1)(b))	Amounting to **10% or more of net worth** of the company
Leasing of property of any kind	Mandatory (Sec 188(1)(c))	Amounting to **10% or more of turnover** of the company
Availing or rendering of any services	Mandatory (Sec 188(1)(d))	Amounting to **10% or more of turnover** of the company
Appointment to any office or place of profit in company/subsidiary	Mandatory (Sec 188(1)(f))	Monthly remuneration exceeding **₹2,50,000**
Underwriting remuneration for securities	Mandatory (Sec 188(1)(g))	Exceeding **1% of net worth**

Critical Arm's Length Safe Harbor (Sec 188(1) 4th Proviso): Section 188 does NOT apply to any transaction entered into by the company in its **ordinary course of business**, other than transactions which are not on an **arm’s length basis**.

Section C: Inspection, Inquiry and Investigation (Sections 206 to 229)

10. Calling for Information, Inspection of Books & Inquiries (Section 206)

- **Power of Registrar:** If on scrutiny of any document filed by a company, or on receipt of information, RoC believes further information is necessary, he may by written notice require the company to furnish information, explanation, or produce documents within specified time.
- **Duty of Officers:** Past and present officers are obligated to produce documents and furnish explanations to the best of their power.
- **Inquiry on Grievance:** If RoC is satisfied on representation by any person that business is conducted for fraudulent/unlawful purposes, he can call for information after giving opportunity of being heard.
- **Central Government Inspection (Sec 206(5)):** Central Government may direct inspection of books and papers by an inspector appointed for this purpose.

11. Conduct of Inspection, Inquiries, Search & Seizure (Sections 207 - 209)

- **Powers of Inspector (Sec 207):** Possesses powers of a Civil Court under CPC, 1908 (summoning witnesses, enforcing attendance, examining on oath, production of books). Penalties apply for non-compliance (imprisonment up to 1 year and fine up to ₹1 Lakh, director disqualified).
- **Search and Seizure (Sec 209):** If RoC or Inspector has reasonable ground to believe books and papers are likely to be destroyed, mutilated, altered, or secreted, he may obtain an order from the **Special Court** and enter, search place, and seize books. Seized books can be retained for maximum **180 days** (can be called back for another 180 days).

12. Investigation into Affairs of Company (Section 210 vs Section 213)

Parameters	Section 210 (Investigation by Central Govt)	Section 213 (Investigation ordered by NCLT)
Initiation Triggers	- On receipt of report of RoC/Inspector. - On intimation of a **Special Resolution** passed by company. - In **Public Interest**.	On application made by eligible members, or any other person proving fraud, business for unlawful purpose, or oppressive formation.

Eligibility of Members	Company passes Special Resolution.	- Co. having share capital: Not less than **100 members** OR members holding not less than **1/10th of total voting power**. - Co. having no share capital: Not less than **1/5th of total persons** on company's register.
Order Type	Central Govt orders investigation and appoints inspectors directly.	Tribunal (NCLT) gives notice, hears parties, and if satisfied, orders that company's affairs *ought to be investigated* by CG. Central Govt then appoints inspectors.

13. Serious Fraud Investigation Office (SFIO) (Sections 211 & 212)

Statutory Mandate: Multi-disciplinary organization established by Central Govt to investigate white-collar corporate frauds.

Exclusive Jurisdiction (Sec 212(2)): Where a case has been assigned to SFIO, no other investigating agency of Central or State Govt shall proceed with investigation; all relevant records must be transferred to SFIO.

Arrest Powers (Sec 212(8)): If Director/Addl Director/Joint Director of SFIO has reason to believe (recorded in writing) that any person is guilty of an offence punishable under Section 447, he may arrest such person.

Twin Conditions for Bail (Sec 212(6)): Offence covered u/s 447 is cognizable and non-bailable. No person accused shall be released on bail unless:

1. The Public Prosecutor has been given an opportunity to oppose the application for bail; and
2. Where the Public Prosecutor opposes, the Court is satisfied that there are **reasonable grounds for believing that he is not guilty** of such offence and that he is **not likely to commit any offence while on bail**.

14. Freezing of Assets, Disgorgement & Other Powers (Sections 221 - 224)

- **Freezing Assets (Sec 221):** NCLT, on reference by CG or on complaint of members/creditors, may order company not to transfer or dispose of funds, assets, or properties for a period not exceeding **3 years**.
- **Imposition of Restrictions on Securities (Sec 222):** Where it appears to NCLT in connection with investigation u/s 216 that facts about securities cannot be found out without restrictions, NCLT may order securities be subject to restrictions for maximum **3 years** (transfers void, no voting rights, no dividend payments).

- **Disgorgement of Asset/Cash (Sec 224(5)):** If an inspector's report states that any director, KMP, or other person has obtained any undue advantage or benefit in the form of asset, property or cash, CG may apply to Tribunal for appropriate orders for disgorgement of such asset and holding those persons personally liable without limitation.

Case Study 1: Intervening Period between Board Meetings (Sec 173)

FACTS OF THE CASE:

PQR Ltd held its Board Meetings on 10th January, 15th May, 20th September, and 28th December during the calendar year. The statutory auditor reported non-compliance of Section 173. The management argued that since they held 4 meetings in the calendar year, they have fully complied. Examine the validity of the management's argument.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 173(1) of the Companies Act, 2013, every company shall hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than **120 days** shall intervene between two consecutive meetings of the Board.

Analysis:
- Gap between 1st Meeting (10-Jan) and 2nd Meeting (15-May): 21 (Jan) + 28 (Feb) + 31 (Mar) + 30 (Apr) + 15 (May) = **125 days**.
- Gap between 2nd Meeting (15-May) and 3rd Meeting (20-Sep): 16 (May) + 30 (Jun) + 31 (Jul) + 31 (Aug) + 20 (Sep) = **128 days**.
In both instances, the intervening gap exceeded the statutory ceiling of 120 days.

Conclusion: The management's argument is legally untenable. Merely holding 4 meetings in a year is insufficient; the interval between two consecutive meetings must never exceed 120 days. The company has violated Section 173(1) and is liable to statutory penalties.

Case Study 2: Board Meeting at Shorter Notice (Sec 173(3))

FACTS OF THE CASE:

A Board Meeting of Zenith Ltd was summoned by giving 3 days' notice to transact urgent corporate business. The company has 3 Independent Directors. None of the Independent Directors could attend the meeting due to prior commitments. Decisions were taken by majority of the other directors present. Are the decisions legally binding?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 173(3), 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.

The Proviso Mechanism: The proviso to Section 173(3) provides that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting **shall be circulated to all the directors**, and shall be final only on **ratification thereof by at least one independent director**.

Conclusion: The decisions taken at the meeting are not immediately binding or final. They will become legally operative only after they are formally circulated to all directors and ratified by at least one Independent Director of Zenith Ltd.

Case Study 3: Quorum in case of Interested Directors (Sec 174)

FACTS OF THE CASE:

The Board of Directors of Alpha Ltd consists of 9 directors. A contract with a firm where 7 directors are interested was placed before the Board. The remaining 2 non-interested directors attended and voted unanimously in favor of the contract. The dissenting shareholders claim the resolution is invalid for lack of quorum. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 174(1) prescribes standard quorum as 1/3rd of total strength or 2 directors, whichever is higher (1/3rd of 9 = 3 directors). However, Section 174(3) creates an explicit exception: where at any time the number of interested directors exceeds or is equal to **two-thirds of the total strength**, the number of directors who are not interested and are present at the meeting, being **not less than two**, shall be the quorum during such time.

Analysis: Total strength = 9 directors. 2/3rd of 9 = 6 directors. The interested directors are 7, which exceeds 2/3rd. Hence, the non-interested directors present, being 2, legally constitute a valid quorum for transacting this specific business.

Conclusion: The quorum was legally complete under Section 174(3), and the resolution passed unanimously by the 2 non-interested directors is valid and binding.

Case Study 4: Resolution by Circulation Requisitioned to Meeting (Sec 175)

FACTS OF THE CASE:

The Chairman of Beta Ltd circulated a draft resolution for approval among its 12 directors. 7 directors gave their written assent to the resolution. However, 4 directors sent a written requisition requiring that the resolution be decided at a formal Board meeting. The Chairman declared the resolution passed by circulation. Evaluate the Chairman's action.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 175(1), a resolution by circulation is passed if approved by a majority of directors entitled to vote. However, under the proviso to Section 175(1), where **not less than one-third of the total number of directors** of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

Analysis: Total directors = 12. One-third threshold = 12 x 1/3 = 4 directors. Exactly 4 directors requisitioned the matter to be heard at a meeting.

Conclusion: The Chairman's action is illegal and void. Once 1/3rd of the directors (4 out of 12) demanded a formal meeting, the Chairman was statutorily mandated to withdraw the circular resolution and place it before a Board meeting. The resolution cannot be treated as passed.

Case Study 5: Audit Committee Composition (Sec 177)

FACTS OF THE CASE:

Apex Ltd, an unlisted public company, has a paid-up share capital of ₹12 Crores and turnover of ₹80 Crores. Its Board consists of 6 directors. The company constituted an Audit Committee comprising 2 Independent Directors and 2 Executive Directors. Examine the validity of the composition of the Audit Committee.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, an unlisted public company having paid-up capital of ₹10 Crores or more is required to constitute an Audit Committee. As per Section 177(2), the Audit Committee shall consist of a minimum of **3 directors** with **independent directors forming a majority**.

Analysis: Apex Ltd has paid-up capital of ₹12 Crores (≥ ₹10 Cr), so constitution is mandatory. The committee has 4 directors (meets minimum 3). However, independent directors are 2 out of 4 (50%), which does NOT constitute a 'majority' (more than 50%).

Conclusion: The composition violates Section 177(2). To be valid, independent directors must form a majority (e.g., at least 3 Independent Directors out of 4 or 5 members).

Case Study 6: Establishment of Vigil Mechanism (Sec 177(9))

FACTS OF THE CASE:

Global Pvt Ltd has a paid-up capital of ₹2 Crores and turnover of ₹45 Crores. However, it has accepted fixed deposits from the public amounting to ₹60 Crores. The company has not established a Vigil Mechanism. Is it in breach of law?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 177(9) read with Rule 7, every listed company, every company which accepts deposits from the public, and every company which has borrowed money from banks and public financial institutions in excess of **₹50 Crores** shall establish a **Vigil Mechanism** for directors and employees to report genuine concerns.

Conclusion: Since Global Pvt Ltd has accepted deposits exceeding statutory limits (and borrowings > ₹50 Cr category), it is legally obligated to establish a vigil mechanism. Failure to do so constitutes a direct violation of Section 177(9), attracting penal liability under Section 178(8).

Case Study 7: Sale of Substantially the Whole of Undertaking (Sec 180(1)(a))

FACTS OF THE CASE:

Infra Ltd owns three distinct business divisions: Division A, B, and C. Division A contributes 25% of the total income of the company and accounts for 22% of its net worth. The Board of Directors decided to sell 85% of Division A to a third party by passing a Board Resolution. Is the Board competent to do so on its own?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 180(1)(a), the Board of Directors of a public company cannot sell, lease, or dispose of the whole or substantially the whole of the undertaking without the consent of the company by a **Special Resolution**.
- *Undertaking:* An undertaking in which the investment exceeds 20% of net worth OR which generates 20% of total income.
- *Substantially the whole:* 20% or more of the value of the undertaking.

Analysis: Division A satisfies the definition of an undertaking (contributes 25% income > 20%, accounts for 22% net worth > 20%). Selling 85% of Division A constitutes selling 'substantially the whole of the undertaking' (> 20%).

Conclusion: The Board is not competent to execute the sale on its own authority. It must seek prior approval of the shareholders by passing a **Special Resolution** in a general meeting.

Case Study 8: Borrowing Limits under Section 180(1)(c)

FACTS OF THE CASE:

Bright Ltd has Paid-up Capital: ₹40 Cr, Free Reserves: ₹30 Cr, Securities Premium: ₹10 Cr. The company has existing long-term loans of ₹65 Cr and temporary working capital overdrafts from SBI of ₹15 Cr. The Board proposes to borrow an additional long-term loan of ₹25 Cr from HDFC Bank by passing a Board Resolution. Advise.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 180(1)(c), the Board cannot borrow money where the money to be borrowed, together with money already borrowed, exceeds the aggregate of **Paid-up Capital** + **Free Reserves** + **Securities Premium**, except with the consent of the company by **Special Resolution**. Temporary loans obtained from the company's bankers in the ordinary course of business are excluded.

Computation:
- Aggregate Base = 40 + 30 + 10 = ₹80 Crores.
- Existing qualifying debt = ₹65 Crores (₹15 Cr temporary overdraft is excluded).
- Proposed borrowing = ₹25 Crores.
- Total debt after borrowing = 65 + 25 = **₹90 Crores**.

Since ₹90 Crores exceeds the aggregate base of ₹80 Crores, the statutory threshold is breached.

Conclusion: The Board cannot borrow the additional ₹25 Crores through a simple Board resolution. It must convene a general meeting and obtain shareholder approval via a **Special Resolution**.

Case Study 9: Contributions to Charitable Funds (Sec 181)

FACTS OF THE CASE:

The average net profits of Marvel Ltd for the three immediately preceding financial years were ₹10 Crores. The Board contributed ₹60 Lakhs to an educational charitable trust without obtaining prior approval in a general meeting. A shareholder challenges this contribution. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 181, the Board of Directors of a company may contribute to bona fide charitable and other funds. However, the prior permission of the company in general meeting is required if the aggregate amount of such contribution in any financial year exceeds **5% of its average net profits** for the three immediately preceding financial years.

Analysis: 5% of average net profits (₹10 Crores) = ₹50 Lakhs. The Board contributed ₹60 Lakhs, exceeding the limit by ₹10 Lakhs.

Conclusion: The Board's unilateral action is in violation of Section 181. Prior approval in a general meeting was mandatory for the excess ₹10 Lakhs. The contribution is unauthorized unless ratified by the shareholders in a general meeting.

Case Study 10: Political Contributions (Sec 182)

FACTS OF THE CASE:

Gov-Tech Ltd is a Government Company incorporated in 2020. It made a political contribution of ₹10 Lakhs in cash to a registered political party. Evaluate the legality under Section 182.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 182 permits companies to make political contributions subject to strict statutory restrictions:
1. **Ineligible Companies:** A **Government company** and a company which has been in existence for **less than three financial years** are completely PROHIBITED from contributing any amount directly or indirectly to any political party.
2. **Mode of Payment:** Contribution must be made only by an account payee cheque, bank draft, electronic clearing system, or electoral bonds. Cash contributions are strictly barred.

Conclusion: The contribution is completely illegal on three grounds: (i) Gov-Tech Ltd is a Government Company, (ii) It was paid in cash, and (iii) It does not satisfy the statutory mandate of law. Severe penal action under Section 182(4) applies (fine up to 5 times the contribution and imprisonment for officers in default up to 6 months).

Case Study 11: Disclosure of Director's Interest (Sec 184)

FACTS OF THE CASE:

Mr. K is a director in ABC Ltd. He holds 3% equity shares in XYZ Ltd. ABC Ltd entered into a commercial contract worth ₹1 Crore with XYZ Ltd. Mr. K did not disclose his shareholding in XYZ Ltd, contending that Section 184 applies only if shareholding exceeds 5%. Examine.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 184(2) states that every director who is in any way concerned or interested in a contract or arrangement entered into or to be entered into with a body corporate in which such director, or in association with any other director, holds **more than 2% shareholding** of that body corporate, must disclose the nature of his concern or interest at the meeting of the Board in which the contract is discussed.

Conclusion: Mr. K's contention is erroneous. The statutory threshold under Section 184(2)(a) is **more than 2%**, not 5%. Since Mr. K holds 3%, he was legally required to disclose his interest at the Board meeting and abstain from participating/voting. Failure to disclose attracts penalty and vacation of office under Section 167(1)(c).

Case Study 12: Loan to Director (Sec 185 - Wholly Owned Subsidiary Exception)

FACTS OF THE CASE:

Holdco Ltd advanced a loan of ₹50 Crores to Subco Ltd, its Wholly-Owned Subsidiary (WOS), for constructing a manufacturing plant. Mr. D is a common director in both Holdco and Subco. The auditor remarks that this loan violates Section 185. Comment.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 185(1) prohibits loans to directors or entities in which directors are interested. However, Section 185(3)(c) carves out an explicit statutory exemption: any loan made by a holding company to its **wholly owned subsidiary company** or any guarantee given or security provided by a holding company in respect for any loan made to its wholly owned subsidiary company is exempted from the prohibition, provided that the loans are utilized by the subsidiary for its **principal business activities**.

Conclusion: The auditor's objection is invalid. The loan was advanced by Holdco to its Wholly-Owned Subsidiary for building a manufacturing plant (its principal business activity). The transaction is covered under the statutory exemption of Section 185(3)(c) and is fully compliant.

Case Study 13: Loan to Entity in which Director is Interested (Sec 185(2))

FACTS OF THE CASE:

Apex Ltd wants to give a loan of ₹5 Crores to Nova Pvt Ltd. Mr. R is a director of Apex Ltd and also holds 30% of the equity shares of Nova Pvt Ltd. Can Apex Ltd grant this loan?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 185(2), a company may advance any loan (including any loan represented by a book debt) or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that:
1. A **Special Resolution** is passed by the company in general meeting; and
2. The loans are utilized by the borrowing company for its **principal business activities**.

Analysis: Nova Pvt Ltd falls within the definition of 'any person in whom any of the director is interested' under clause (b) of Explanation to Sec 185(2) (private company in which director is a member). Therefore, Apex Ltd can advance the loan provided it passes a Special Resolution and ensures the funds are used for Nova's principal business.

Case Study 14: Loan & Investment Limits (Sec 186)

FACTS OF THE CASE:

Pioneer Ltd has Paid-up Capital: ₹60 Cr, Free Reserves: ₹20 Cr, Securities Premium: ₹20 Cr. The Board has already extended loans of ₹50 Cr and investments of ₹15 Cr. The Board plans to give a fresh loan of ₹10 Cr to a supplier at a meeting where 4 out of 5 directors vote in favor. Is this legally valid?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 186(2), no company shall directly or indirectly give any loan/guarantee or acquire securities exceeding: 60% of (Paid-up Capital + Free Reserves + Securities Premium) OR 100% of (Free Reserves + Securities Premium), whichever is more.
- 60% of (60 + 20 + 20) = 60% of 100 = ₹60 Crores.
- 100% of (20 + 20) = ₹40 Crores.
Maximum threshold without special resolution = **₹60 Crores**.

Analysis:
Existing loans & investments = 50 + 15 = ₹65 Crores (already exceeds threshold, presumably approved earlier by SR). The fresh loan of ₹10 Crores pushes it further to ₹75 Crores. Special Resolution is mandatory.
Furthermore, Section 186(5) mandates that no loan or investment shall be made unless the resolution is passed at a meeting of the Board with the **consent of all the directors present at the meeting (Unanimous Board Resolution)**. Here, 4 out of 5 voted in favor (not unanimous).

Conclusion: The transaction is invalid on two grounds: (1) Lack of unanimous approval of all directors present at the Board meeting, and (2) Absence of a Special Resolution passed by the shareholders.

Case Study 15: Two Layers of Investment Companies (Sec 186(1))

FACTS OF THE CASE:

India Holdco Ltd invested in Sub-1 Ltd (an investment company). Sub-1 Ltd invested in Sub-2 Ltd (an investment company). Sub-2 Ltd now proposes to acquire 100% shares in Sub-3 Ltd (an operating manufacturing company incorporated in Germany). Does this violate Section 186(1)?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 186(1), a company shall make investment through not more than **two layers** of investment companies.

Statutory Exception: Proviso (ii) to Section 186(1) states that this restriction shall not affect a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country.

Conclusion: The acquisition of Sub-3 Ltd by Sub-2 Ltd does not violate Section 186(1) because Sub-3 Ltd is an operating manufacturing company (not an investment company). Section 186(1) restricts layers of *investment companies*, not operating subsidiaries. Moreover, cross-border corporate acquisitions enjoy explicit statutory exemptions under the proviso.

Case Study 16: Related Party Transaction - Ordinary Course & Arm's Length (Sec 188)

FACTS OF THE CASE:

Smart Retail Ltd entered into a long-term contract for the purchase of consumer electronics worth ₹50 Crores from a private company where the Managing Director's brother is a director. The company did not obtain Board or shareholder approval, arguing that the transaction is in its ordinary course of business and executed at market prices (arm's length basis). Examine.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under the fourth proviso to Section 188(1), nothing contained in Section 188(1) shall apply to any transactions entered into by the company in its **ordinary course of business**, other than transactions which are **not on an arm’s length basis**.

Analysis: Smart Retail Ltd is a retail company purchasing consumer electronics for sale. This forms its core, ordinary course of business. Furthermore, the facts state that the purchases were executed at prevailing market prices (Arm's Length Basis).

Conclusion: The company's argument is correct in law. Since both conditions of the fourth proviso (ordinary course of business + arm's length basis) are cumulatively satisfied, Section 188(1) is completely inapplicable. Neither Board approval nor an Ordinary Resolution in general meeting is required.

Case Study 17: Related Party Contract Approval Ceiling (Rule 15)

FACTS OF THE CASE:

Titan Ltd has a turnover of ₹200 Crores and Net Worth of ₹80 Crores. It enters into a contract for sale of raw materials with a related party for ₹25 Crores, which is not at arm's length. The Board passed a resolution approving it, but did not place it before the shareholders. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 188(1) read with Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014, contracts or arrangements with respect to sale, purchase or supply of any goods or materials amounting to **10% or more of the turnover** of the company require prior approval by an **Ordinary Resolution** in general meeting.

Analysis: 10% of Turnover = 10% of ₹200 Crores = ₹20 Crores. The contract value is ₹25 Crores, exceeding the 10% ceiling.

Conclusion: The contract is non-compliant. Since the transaction is not at arm's length and breaches the 10% turnover limit, a simple Board resolution is insufficient. It must be approved by the shareholders by passing an Ordinary Resolution. As per Section 188(3), if not ratified within 3 months, it becomes voidable at the option of the Board.

Case Study 18: Ratification of Related Party Transactions (Sec 188(3))

FACTS OF THE CASE:

A director entered into a related party contract without obtaining the prior approval of the Board or shareholders. Five months later, the Board realized the lapse and passed a resolution ratifying the contract. Is this ratification valid?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: According to Section 188(3), where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting **within three months** from the date on which such contract or arrangement was entered into, such contract or arrangement shall be **voidable at the option of the Board** or, as the case may be, of the shareholders.

Conclusion: The ratification after 5 months is invalid because the statutory window of 3 months has expired. The contract is voidable at the option of the Board. If the contract is with a related party to any director, the director concerned shall indemnify the company against any loss incurred by it.

Case Study 19: Inspection of Books by Registrar (Sec 206 & 207)

FACTS OF THE CASE:

During an inspection u/s 206, the Inspecting Officer directed the ex-Chief Financial Officer (who resigned 2 years ago) to appear and produce certain emails and documents. The ex-CFO refused, arguing he is no longer an officer of the company. Analyze the legal consequence.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 206(2) and Section 207(1), it shall be the duty of every director, officer, or other employee of the company, **including past directors, officers, or employees**, to produce all such books and papers and furnish statements or information to the Registrar or Inspector.

Conclusion: The ex-CFO's refusal is illegal. The statutory duty under Sections 206 and 207 explicitly extends to past officers who were in employment during the relevant period under inspection. Under Section 207(4), failure to comply without reasonable cause makes the ex-CFO punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than ₹25,000 but which may extend to ₹1,00,000.

Case Study 20: Search and Seizure Duration (Sec 209)

FACTS OF THE CASE:

The Registrar seized books of accounts of Zenith Ltd on 1st January 2026 pursuant to an order from the Special Court. The company applied for the return of its books on 15th August 2026. The RoC refused, stating the investigation is ongoing. Can the RoC retain them indefinitely?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 209(1), the Registrar or Inspector may retain seized books and papers for a period not exceeding **180 days** from the date of seizure. Under Section 209(2), the Registrar or Inspector may, after the expiry of 180 days, return them, and may call for them again for a period of 180 days if needed.

Analysis: 180 days from 1-Jan-2026 expired on 30-June-2026. On 15th August 2026, the books had been retained for 227 days without returning them first or issuing a fresh call order.

Conclusion: The RoC cannot retain the books indefinitely. The initial retention beyond 180 days without returning them violates Section 209. The company has the legal right to demand the return of the seized records.

Case Study 21: Investigation into Affairs on Special Resolution (Sec 210)

FACTS OF THE CASE:

A listed company passed a Special Resolution in general meeting resolving that the affairs of the company ought to be investigated. A certified copy was sent to the Central Government.

The Ministry of Corporate Affairs (MCA) rejected the request stating no fraud was proven. Evaluate MCA's stand.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 210(1) empowers Central Government to order investigation in three circumstances: (a) on report of RoC/Inspector, (b) on intimation of a **Special Resolution** passed by a company, or (c) in **Public Interest**.
Furthermore, Section 210(2) explicitly states: *'Where an order is passed by a court or Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government **shall order** an investigation.'*

Analysis & Conclusion: While Section 210(1)(b) uses the word 'may' for Special Resolution (vesting discretion in CG), established administrative law mandates that when shareholders pass an SR declaring internal mismanagement, CG cannot reject it arbitrarily on the ground that 'no fraud is proven'. The very purpose of an investigation is to uncover whether fraud occurred. MCA's outright refusal without examining the grounds is arbitrary and subject to judicial review.

Case Study 22: Exclusive Jurisdiction of SFIO (Sec 212)

FACTS OF THE CASE:

The Central Government assigned the investigation of fraudulent activities in Satyam-Tech Ltd to the Serious Fraud Investigation Office (SFIO). Simultaneously, the State Police Crime Branch registered an FIR and proceeded to arrest the promoters. The promoters challenge the police jurisdiction. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 212(2) of the Companies Act, 2013 provides: *'Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, **no other investigating agency** of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act.'*

Conclusion: The challenge by the promoters is legally valid. Once a case is assigned to the SFIO, all other agencies (including State Police) are statutorily divested of their investigative jurisdiction over offences under this Act. The State Police must immediately halt its parallel investigation and transfer all records and documents to the SFIO under Section 212(3).

Case Study 23: Strict Bail Conditions in SFIO Prosecutions (Sec 212(6))

FACTS OF THE CASE:

Mr. J was arrested by the SFIO for multi-crore fraud under Section 447. He applied for regular bail before the Special Court, arguing that bail is the rule and jail is an exception. The Public Prosecutor opposed the bail. Explain the statutory hurdles Mr. J faces.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 212(6), offences covered under Section 447 are cognizable and non-bailable. The Court cannot grant bail unless the twin conditions are met:
1. The Public Prosecutor has been given an opportunity to oppose the application; and
2. Where the Public Prosecutor opposes, the court is satisfied that there are **reasonable grounds for believing that the accused is NOT guilty** of such offence and that he is **not likely to commit any offence while on bail**.

Conclusion: The standard principle of 'bail is the rule' is expressly overridden by Section 212(6). The burden is inverted onto the accused to satisfy the court of his innocence at the preliminary stage. Unless Mr. J satisfies both stringent conditions, the Special Court cannot grant him bail.

Case Study 24: Investigation into Company's Ownership (Sec 216)

FACTS OF THE CASE:

The Central Government suspects that the majority shareholding of a critical infrastructure company in India is secretly controlled by hostile foreign nationals through a web of shell companies in tax havens. What statutory powers can the Central Government invoke under Section 216?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 216(1), where it appears to the Central Government that there is good reason so to do, it may appoint one or more inspectors to investigate and report on the **membership of any company** and other matters relating to the company, for the purpose of determining the true persons:
(a) who are or have been financially interested in the success or failure of the company; or
(b) who are or have been able to control or materially to influence the policy of the company.

Powers Available: Under Section 222, the Tribunal, during such an investigation, may place complete **restrictions upon the securities** (freezing transfers, voting rights, and dividend payouts) for a period up to 3 years to force the beneficial owners to reveal their identities.

Case Study 25: Disgorgement of Undue Assets from Directors (Sec 224(5))

FACTS OF THE CASE:

The final report of the SFIO submitted under Section 223 revealed that three whole-time directors siphoned off ₹120 Crores of company funds by creating dummy vendor accounts, purchasing personal luxury estates in Europe. What immediate action can the Central Government take against these directors under Section 224?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: According to Section 224(5), if the inspector's report states that any director, key managerial personnel, or other officer of the company has obtained any undue advantage or benefit, whether in the form of any asset, property, or cash or in any other manner, the Central Government may file an application before the Tribunal (NCLT) for appropriate orders with regard to **disgorgement of such asset, property, or cash**, and also for holding such director, key managerial personnel, or other officer, as the case may be, **personally liable without any limitation of liability**.

Conclusion: The Central Government can immediately approach the NCLT for an order of disgorgement, seizing the personal luxury assets of the directors in India and abroad, and imposing unlimited personal liability on them to recover the entire ₹120 Crores.

Summary & Key Takeaways for Examination Day

1. **Board Meetings (Sec 173):** Minimum 4 meetings/year; Maximum gap: 120 days. Notice: 7 days. Urgent meeting without independent director: mandatory circulation and ratification by at least one independent director.
2. **Quorum (Sec 174):** Higher of 1/3rd total strength or 2 directors. Interested directors ≥ 2/3rd: minimum 2 non-interested directors form valid quorum.
3. **Board Powers vs Restrictions:** Sec 179(3) powers strictly exercised at Board meetings (cannot circulate). Sec 180 restrictions on public companies mandate Special Resolutions (Sale of undertaking: 20% rule; Borrowings: Paid-up + Reserves + Securities Premium).
4. **Loans & Investments (Sec 185 & 186):** Strict ban on loans to directors. Permissible to interested entities with SR + principal business utilization. Sec 186 limits: Greater of 60% of (Paid-up + Reserves + Premium) or 100% of (Reserves + Premium). Unanimous board consent always required.
5. **Related Party Transactions (Sec 188):** Board approval mandatory. Shareholder Ordinary Resolution required if thresholds (10% turnover/net worth) crossed. Fully exempted if in ordinary course of business AND at arm's length.
6. **Inspection & Inquiry (Sec 206 - 209):** Civil court powers under CPC. Search & Seizure retention capped at 180 days + 180 days.
7. **SFIO (Sec 211 & 212):** Exclusive jurisdiction over corporate frauds. Offence u/s 447 is cognizable, non-bailable; twin bail conditions under Section 212(6) invert the presumption of innocence.
8. **Disgorgement (Sec 224(5)):** Unlimited personal liability and confiscation of ill-gotten assets.

--- End of Module I (Sections B & C) Detailed Guide ---

ICMAI PAPER 13

CORPORATE AND ECONOMIC LAWS

PART 3: MODULE I (SECTIONS D, E, F & G)

Compromises, Arrangements, Amalgamations, Oppression, Mismanagement, Winding Up & NCLT (Comprehensive Theory + 25 Solved Exam Cases)

Target Examination: December 2026
Syllabus Framework: ICMAI 2022

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Section D: Compromises, Arrangements, and Amalgamations (Sec 230 to 240)

1. Power to Compromise or Make Arrangements (Section 230)

Who can apply? The company, any creditor, any member, or the liquidator (if winding up) can file an application to the NCLT for a compromise or arrangement.
NCLT Directions: NCLT may order a meeting of the creditors or members to be called.
Notice of Meeting: Notice must be sent to all creditors/members accompanied by a statement disclosing the terms of the compromise, material interests of directors/KMPs, and the valuation report.
Notice to Sectoral Regulators: Notice must also be sent to Central Government (Regional Director), Income Tax authorities, RBI, SEBI, CCI, and other sectoral regulators seeking their representations within **30 days**.

Majority Required for Approval (Sec 230(6)):

The compromise or arrangement must be approved by a majority of persons representing **three-fourths in value (75%)** of the creditors, or members, present and voting (in person, by proxy, or postal ballot). Once sanctioned by the NCLT, the order binds all creditors, members, and the company.

Objections (Sec 230(4)):

An objection to the compromise or arrangement can only be made by persons holding **not less than 10% of the shareholding** OR having **outstanding debt amounting to not less than 5% of the total outstanding debt** as per the latest audited financial statement.

2. Merger and Amalgamation of Companies (Section 232)

When an application under Section 230 involves a scheme for the reconstruction of the company or the amalgamation of any two or more companies, the NCLT ensures the entire property and liabilities of the transferor company are transferred to the transferee company.

- The scheme cannot be sanctioned unless the transferee company circulates the draft scheme, valuation report, and an auditor's certificate stating that the accounting treatment complies with Section 133 (Accounting Standards).
- **Appointed Date vs Effective Date:** The scheme must clearly indicate an 'Appointed Date' from which the scheme will be effective.

3. Fast Track Mergers (Section 233)

Applicability: Simplifies the merger process (bypassing NCLT) for:
1. Two or more **Small Companies**.
2. A Holding Company and its **Wholly Owned Subsidiary (WOS)** company.
3. Two or more Start-up Companies.

Approving Authority: The Central Government (Delegated to the **Regional Director**), Official Liquidator, and Registrar of Companies (ROC). No NCLT intervention is required unless the Central Government thinks the scheme is not in public interest.

Procedure for Fast Track Merger:

1. Notice issued to ROC and Official Liquidator inviting objections within 30 days.
2. Declaration of Solvency filed by each company with the ROC.
3. Scheme approved by members holding at least **90% of total number of shares** and creditors representing **9/10th in value** of creditors.
4. If no objections, or objections are unsustainable, the Central Government registers the scheme.

4. Cross-Border Mergers (Section 234)

Section 234 permits the merger or amalgamation of a foreign company with an Indian company and vice versa. Prior approval of the **Reserve Bank of India (RBI)** is mandatory. The foreign company must be incorporated in a "permitted jurisdiction" notified by the Central Government.

5. Squeeze Out Provisions: Power to Acquire Shares of Dissenting Shareholders (Section 235)

Where a scheme/contract involves the transfer of shares to another company (transferee company) and has been approved by holders of not less than **9/10th in value of the shares (90%)** within 4 months, the transferee company may, within 2 months thereafter, give notice to any dissenting shareholder to acquire his shares.

6. Purchase of Minority Shareholding (Section 236)

If an acquirer becomes the registered holder of **90% or more** of the issued equity share capital, the acquirer must notify the company to buy the remaining equity shares. The minority shareholders can also offer their shares to the majority shareholder at a price determined by a Registered Valuer.

Section E: Prevention of Oppression and Mismanagement (Sec 241 to 246)

7. Application to Tribunal for Relief (Section 241)

Any member of a company can apply to the NCLT if they complain that:
1. **Oppression:** The affairs of the company are being conducted in a manner prejudicial to public interest, prejudicial or oppressive to him or any other member, or prejudicial to the interests of the company.
2. **Mismanagement:** A material change has taken place in the management or control of the company, and because of such change, it is likely that the affairs will be conducted in a manner prejudicial to the company's interests or members.

8. Right to Apply (Threshold limits) (Section 244)

To prevent frivolous litigation, the right to apply under Section 241 is restricted to members meeting specific thresholds:

Type of Company	Eligible Members to File Petition
Company having a share capital	- Not less than **100 members** of the company; OR - Not less than **1/10th of the total number of its members**; OR - Any member(s) holding not less than **1/10th of the issued share capital** (subject to all calls/dues being paid).
Company NOT having a share capital	- Not less than **1/5th of the total number of its members**.

NCLT's Discretionary Power: The Tribunal may, on an application made to it, **waive** all or any of the above requirements so as to enable members to apply under Section 241, even if they do not meet the 100 member / 10% threshold.

9. Powers of Tribunal (Section 242)

If the Tribunal finds the company's affairs are oppressive/mismanaged, but winding up would unfairly prejudice such members, the Tribunal may make any order, including:

- Regulating the conduct of affairs of the company in future.
- Purchase of shares or interests of any members by other members or the company itself.

- Restriction on the transfer or allotment of shares.
- Termination, setting aside, or modification of any agreement with MD, manager, or directors.
- Setting aside any fraudulent preference made within 3 months before the application.
- Removal of the Managing Director, Manager, or any of the directors of the company.

10. Class Action Suits (Section 245)

> Members or Depositors can file a class action suit before NCLT if they feel management affairs are prejudicial to their interests. They can claim damages or compensation against the company, directors, auditors, or expert advisors for any fraudulent, unlawful, or wrongful act.
>
> **Required Threshold for Class Action (Rule 84):**
> - *Unlisted Company:* At least 100 members or 5% of total members, or holding 5% of unissued share capital.
> - *Listed Company:* At least 100 members or 5% of total members, or holding 2% of issued share capital.
> - *Depositors:* At least 100 depositors or 5% of total number of depositors.

Section F: Winding Up (Sections 271 to 365)

Note: Provisions related to 'Voluntary Winding Up' and winding up due to 'inability to pay debts' have been moved to the Insolvency and Bankruptcy Code (IBC), 2016. The Companies Act, 2013 now primarily deals with Winding Up by the Tribunal on other specific grounds.

11. Circumstances for Winding Up by Tribunal (Section 271)

A company may be wound up by the Tribunal (NCLT) in the following cases:

1. **Special Resolution:** If the company has, by special resolution, resolved that the company be wound up by the Tribunal.
2. **Security of the State:** If the company has acted against the interests of the sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order, decency, or morality.
3. **Fraudulent Affairs:** If on application by ROC/CG, the Tribunal is of the opinion that the affairs have been conducted fraudulently, or the company was formed for fraudulent purposes, or persons managing it have been guilty of fraud/misfeasance.
4. **Default in Filing:** If the company has made a default in filing with the Registrar its financial statements or annual returns for **immediately preceding 5 consecutive financial years**.
5. **Just and Equitable:** If the Tribunal is of the opinion that it is just and equitable that the company should be wound up (e.g., complete deadlock in management, loss of substratum).

12. Petition for Winding Up (Section 272)

A petition to the Tribunal for winding up can be presented by:
(a) The company.
(b) Any contributory or contributories.
(c) The Registrar.
(d) Any person authorized by the Central Government.
(e) By the Central or State Government (in cases involving national security).

13. Company Liquidators (Section 275)

For the purposes of winding up by the Tribunal, the Tribunal shall appoint a **Company Liquidator** from a panel of resolution professionals registered under the Insolvency and Bankruptcy Code, 2016.

14. Overriding Preferential Payments (Section 326)

> In the winding up of a company, the following debts shall be paid in priority to all other debts (overriding even secured creditors if the secured creditor does not relinquish his security, in which case pari passu applies):
> 1. **Workmen's Dues:** Arising out of employment.
> 2. **Debts due to Secured Creditors:** To the extent such debts rank *pari passu* with workmen's dues.
>
> These debts shall be paid in full, unless the assets are insufficient, in which case they shall abate in equal proportions.

15. Preferential Payments (Section 327)

Subject to Section 326, the following shall be paid in priority to ordinary unsecured creditors:
- Revenues, taxes, cesses due to Govt (payable within 12 months before winding up).
- Wages/salary of any employee (other than workmen) for a period not exceeding 4 months.
- All accrued holiday remuneration to employees.
- ESI, PF, Gratuity fund contributions.

16. Fraudulent Preference (Section 328)

Any transfer of property, goods, payments, or acts relating to property made by a company within **6 months** before the commencement of its winding up, which has the effect of preferring one creditor over another, shall be deemed a fraudulent preference and shall be invalid.

Section G: NCLT/NCLAT, Special Courts & Producer Companies

17. National Company Law Tribunal (NCLT) & Appellate Tribunal (NCLAT)

- **Constitution:** Established under Section 408 to exercise jurisdiction previously vested in High Courts, CLB, and BIFR. Consists of Judicial and Technical members.
- **Appeal to NCLAT (Sec 421):** Any person aggrieved by an order of the NCLT may appeal to NCLAT within **45 days**. NCLAT may grant an extension of another 45 days if there was sufficient cause.
- **Appeal to Supreme Court (Sec 423):** Any person aggrieved by any order of NCLAT may file an appeal to the Supreme Court within **60 days** on any *question of law* arising out of such order (extendable by 60 days).

18. Special Courts (Section 435)

Central Government establishes Special Courts for the speedy trial of offences under the Companies Act punishable with imprisonment of **two years or more**. Less severe offences are tried by Metropolitan Magistrates or Judicial Magistrates of First Class.

19. Compounding of Certain Offences (Section 441)

> **What can be compounded?** Offences punishable with fine only, or with fine or imprisonment, or with both, can be compounded (settled by paying a fee rather than going to trial).
> **What CANNOT be compounded?** Offences punishable with imprisonment ONLY, or imprisonment AND fine, cannot be compounded.
> **Authority:**
> - If maximum fine does not exceed ₹25 Lakhs -> Compounded by the Regional Director (RD).
> - If maximum fine exceeds ₹25 Lakhs -> Compounded by the NCLT.

20. Producer Companies (Part IXA / Section 378A to 378ZU)

Introduced to allow primary producers (farmers, agriculturalists) to form a corporate entity to gain economies of scale.

- **Formation:** Can be formed by (a) ten or more individuals, each of them being a producer, (b) two or more producer institutions, or (c) a combination of ten or more individuals and producer institutions.

- **Nature:** Treated as a **Private Limited Company** but without a limit on the maximum number of members. The name must end with "Producer Company Limited".
- **Objects:** Strictly restricted to primary produce activities (production, harvesting, procurement, grading, pooling, handling, marketing, selling, export).
- **Voting Rights:** In case of individual members, **one member, one vote** applies regardless of shareholding. If comprised of producer institutions, voting rights are based on their participation in the business.

Case Study 1: Approval of Scheme of Arrangement (Sec 230)

FACTS OF THE CASE:

XYZ Ltd convened a meeting of creditors to approve a scheme of arrangement. Total outstanding debt is ₹100 Crores held by 50 creditors. Only 30 creditors holding debt worth ₹80 Crores attended the meeting. Out of them, 20 creditors holding debt worth ₹65 Crores voted in favor. Does the scheme pass the statutory threshold?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 230(6), a scheme is approved if a majority in number representing **three-fourths in value (75%)** of the creditors, present and voting, agree to the compromise or arrangement.

Analysis:
1. *Majority in Number:* Total present and voting = 30. Majority = 16. Actually voted in favor = 20. (Condition 1 satisfied).
2. *75% in Value of those present & voting:* Value of debt present and voting = ₹80 Crores. 75% of ₹80 Cr = ₹60 Crores. Value voted in favor = ₹65 Crores. (Condition 2 satisfied).

Conclusion: The scheme has legally passed the statutory threshold, as it is approved by a majority in number representing more than 75% in value of the creditors present and voting. The total debt of the company (₹100 Cr) is irrelevant; only the debt of those 'present and voting' matters.

Case Study 2: Objection to Scheme of Arrangement (Sec 230(4))

FACTS OF THE CASE:

Alpha Ltd filed an application for merger with Beta Ltd. A group of shareholders holding 7% of the total share capital raised an objection to the scheme before the NCLT. Evaluate the maintainability of this objection.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: The proviso to Section 230(4) explicitly limits the locus standi (right to object). Any objection to the compromise or arrangement shall be made only by persons holding **not less than 10% of the shareholding** or having an outstanding debt amounting to **not less than 5% of the total outstanding debt** as per the latest audited financial statement.

Conclusion: The objection raised by the group of shareholders is legally non-maintainable. Since their shareholding is 7%, which falls below the mandatory 10% statutory threshold, the NCLT will dismiss their objection summarily for lack of locus standi.

Case Study 3: Fast Track Merger (Sec 233) - Transferee Limits

FACTS OF THE CASE:

A Holding Company (Public Limited, Paid-up Capital ₹50 Cr) wants to merge with its Wholly Owned Subsidiary (WOS). They want to bypass the NCLT and use the Fast Track Merger route u/s 233. A dissenting creditor claims Fast Track is only for 'Small Companies'. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 233 of the Companies Act provides a simplified merger procedure (Fast Track Merger) bypassing the NCLT. This route applies to:
1. Two or more small companies.
2. **A holding company and its wholly-owned subsidiary company.**

Conclusion: The dissenting creditor's claim is incorrect. Section 233 explicitly covers mergers between a holding company and its WOS, regardless of the size or public/private status of the holding company. Therefore, the companies can legally adopt the Fast Track Merger route subject to approvals from the Regional Director, ROC, and Official Liquidator.

Case Study 4: Cross Border Merger (Sec 234)

FACTS OF THE CASE:

An Indian Company wants to merge with a company incorporated in the Cayman Islands. They have obtained shareholder approval. Can they proceed immediately to file with NCLT?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 234 governs mergers between Indian and foreign companies. It mandates two critical prerequisites before an Indian company can merge with a foreign company:
1. The foreign company must be incorporated in a 'notified permitted jurisdiction' by the Central Government.
2. **Prior approval of the Reserve Bank of India (RBI)** must be obtained.

Conclusion: No, they cannot proceed immediately to the NCLT. They must first verify if the Cayman Islands is a notified permitted jurisdiction. More importantly, they must obtain mandatory prior approval from the RBI. Only after RBI clearance can the scheme be filed with the NCLT.

Case Study 5: Squeeze Out of Minority (Sec 235)

FACTS OF THE CASE:

Acquirer Ltd made an offer to buy 100% shares of Target Ltd. Shareholders holding 92% of the shares accepted the offer within 4 months. Acquirer Ltd wants to forcefully buy the remaining 8% from the dissenting shareholders. What is the procedure?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 235, if a scheme or contract involving the transfer of shares has been approved by the holders of not less than **nine-tenths (90%) in value** of the shares whose transfer is involved within 4 months of the offer, the transferee company can squeeze out the dissenting minority.

Procedure: Acquirer Ltd must give a notice to the dissenting shareholders within 2 months after the expiry of the 4-month period, expressing its desire to acquire their shares. Unless the NCLT, on an application by the dissenting shareholders within 1 month of the notice, orders otherwise, Acquirer Ltd is entitled and bound to acquire those shares on the same terms approved by the approving majority.

Case Study 6: Purchase of Minority Shareholding (Sec 236)

FACTS OF THE CASE:

Mr. Z holds 95% of the equity share capital in Delta Ltd. He wishes to delist the company and acquire the remaining 5% from minority shareholders. How will the price for these shares be determined?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 236, if an acquirer becomes the registered holder of 90% or more of the issued equity share capital, the acquirer shall notify the company of their intention to buy the remaining equity shares.

Valuation: The offer price for acquiring the minority shares cannot be determined arbitrarily by Mr. Z. Section 236(2) mandates that the acquirer shall offer to the minority shareholders an amount for acquiring the shares at a price determined on the basis of a valuation established by a **Registered Valuer** in accordance with prescribed rules.

Case Study 7: Oppression and Mismanagement - Eligibility Threshold (Sec 244)

FACTS OF THE CASE:

Omega Ltd has 5,000 members. A group of 80 members holding 5% of the issued share capital wishes to file an oppression petition u/s 241 against the management. Are they eligible?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 244(1), in the case of a company having a share capital, members eligible to apply u/s 241 must be:
(a) Not less than 100 members, OR
(b) Not less than 1/10th of the total number of members (1/10th of 5,000 = 500 members), OR
(c) Members holding not less than 1/10th (10%) of the issued share capital.

Analysis: The petitioning group has 80 members (fails condition a and b) and holds 5% of share capital (fails condition c). Therefore, they lack the statutory threshold to file the petition directly.

Conclusion: While they are ineligible by right, they can file an application to the NCLT under the proviso to Section 244(1) seeking a **waiver** of these requirements. If the NCLT grants the waiver considering the gravity of the oppression, they can proceed with the petition.

Case Study 8: Oppression vs Mere Mismanagement

FACTS OF THE CASE:

A shareholder filed a petition u/s 241 alleging that the company suffered severe financial losses due to a poor business decision taken by the Board regarding a new product launch. Does this constitute oppression or mismanagement?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision & Analysis: For a petition under Section 241 to succeed, there must be a continuous course of conduct that is oppressive, prejudicial to public interest, or fraudulent mismanagement. The Supreme Court has repeatedly held that a mere unwise business decision, an error of commercial judgment, or isolated acts resulting in financial loss do not amount to oppression or mismanagement, provided the directors acted bona fide in the interests of the company.

Conclusion: The petition is unlikely to succeed. The shareholder must prove that the Board's decision lacked probity, was fraudulent, or was taken with an ulterior motive to prejudice the interests of the company or its members, rather than just being a poor business choice.

Case Study 9: Powers of Tribunal in Oppression Cases (Sec 242)

FACTS OF THE CASE:

The NCLT found the Managing Director of Theta Ltd guilty of severe oppression against minority shareholders. As a remedy, the NCLT ordered the termination of the MD's employment agreement. The MD sued the company for ₹5 Crores as compensation for breach of contract. Will he succeed?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 242, the NCLT has sweeping powers to terminate, set aside, or modify any agreement between the company and a managing director to remedy oppression.

Consequence under Sec 243: Section 243 explicitly states that where an order of the Tribunal terminates or modifies an agreement under Section 242, such order shall **not give rise to any claim whatever against the company by any person for damages or for compensation for loss of office**.

Conclusion: The MD will absolutely fail. The statutory bar under Section 243 nullifies any contractual right to compensation when an employment agreement is terminated by the NCLT in an oppression and mismanagement proceeding.

Case Study 10: Re-appointment of Terminated Director (Sec 243)

FACTS OF THE CASE:

Following Illustration 9, the shareholders of Theta Ltd passed a resolution 2 years later to re-appoint the terminated MD as a normal director of the company. Is this legally permissible?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 243(1)(b), no managing director, manager, or director whose agreement is terminated or set aside by an order of the Tribunal under Section 242 shall, for a period of **five years** from the date of the order, without the leave of the Tribunal, be appointed, or act, as the managing director, manager, or director of the company.

Conclusion: The shareholder resolution is illegal and void. The terminated MD is statutorily banned from acting as a director in that company for a cooling-off period of 5 years unless prior leave (permission) is explicitly obtained from the NCLT.

Case Study 11: Class Action Suits (Sec 245) - Claim against Auditors

FACTS OF THE CASE:

The statutory auditors of a listed company colluded with the management to falsify financial statements, causing massive losses to depositors. 150 depositors want to file a suit claiming damages directly from the audit firm. Does the Companies Act permit this?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 245 of the Companies Act introduces 'Class Action Suits'. It allows a specified number of members or depositors to file an application before the NCLT seeking an order to claim damages or compensation from the company, its directors, or its **auditor/ audit firm** for any improper or misleading statement of particulars made in the audit report, or for any fraudulent, unlawful, or wrongful act or conduct.

Conclusion: Yes, the Act explicitly permits this. Since the depositors meet the numerical threshold (100 depositors), they can file a class action suit before the NCLT holding the audit firm liable for damages due to their fraudulent collusion.

Case Study 12: Winding Up by Tribunal - Default in Filing (Sec 271)

FACTS OF THE CASE:

Gama Pvt Ltd has not filed its financial statements or annual returns with the ROC for the financial years 2021-22, 2022-23, 2023-24, and 2024-25. The ROC filed a petition to wind up the company u/s 271 in 2026. Will the NCLT admit the petition?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 271(d) states that a company may be wound up by the Tribunal if it has made a default in filing with the Registrar its financial statements or annual returns for **immediately preceding five consecutive financial years**.

Analysis: The company has defaulted for 4 consecutive financial years (21-22 to 24-25). The statutory trigger requires a default for 5 consecutive years.

Conclusion: The NCLT will dismiss the petition. The ROC's petition is premature. Winding up on this specific ground cannot be initiated until the default persists for five consecutive years.

Case Study 13: Winding Up by Tribunal - Just and Equitable Ground

FACTS OF THE CASE:

A private company has only two shareholders holding 50% shares each, who are also the only two directors. Due to irreconcilable differences, they refuse to speak to each other, resulting in a complete deadlock. No board or general meetings have been held for 2 years. One partner applies for winding up. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 271(e), the Tribunal may order winding up if it is of the opinion that it is **just and equitable** that the company should be wound up.

Analysis & Conclusion: A complete deadlock in the management of a closely held company (quasi-partnership) where the substratum of trust and confidence has completely eroded, and the company cannot function according to the Act, is a classic ground established by courts to order winding up on 'just and equitable' grounds. The NCLT will likely admit the petition and order the winding up of the company.

Case Study 14: Appointment of Liquidator (Sec 275)

FACTS OF THE CASE:

The NCLT passed a winding-up order against a company. The petitioning creditor requested the NCLT to appoint Mr. Y, a senior Chartered Accountant with 30 years of experience but not registered under the IBC, as the Company Liquidator. Can NCLT oblige?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 275 explicitly states that for the purposes of winding up of a company by the Tribunal, the Tribunal shall appoint an Official Liquidator or a liquidator from the panel of **insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016**.

Conclusion: The NCLT cannot oblige. Regardless of Mr. Y's vast experience as a Chartered Accountant, he cannot be appointed as a Company Liquidator under the Companies Act unless he is formally registered as an Insolvency Professional with the IBBI under the IBC, 2016.

Case Study 15: Fraudulent Preference in Winding Up (Sec 328)

FACTS OF THE CASE:

Delta Ltd was facing severe liquidity crisis. Anticipating a winding-up petition, the directors paid off an unsecured loan of ₹2 Crores owed to a relative of the MD in full on 1-Aug-2025. A winding-up petition was presented on 1-Dec-2025, and the winding-up order was passed. The Liquidator challenges the ₹2 Crore payment.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 328, if a company has given preference to one of its creditors, sureties, or guarantors, and the company is wound up on a petition presented within **six months** after the date of such preference, it shall be deemed a **fraudulent preference** and shall be invalid.

Analysis: The payment was made on 1-Aug-2025. The winding-up petition was presented on 1-Dec-2025, which is exactly 4 months after the payment. This falls within the 6-month statutory suspect period.

Conclusion: The Liquidator's challenge will succeed. The NCLT will declare the transaction as a fraudulent preference, restoring the position to what it was, effectively forcing the relative to return the ₹2 Crores to the Liquidator's asset pool.

Case Study 16: Overriding Preferential Payments (Sec 326)

FACTS OF THE CASE:

In the winding up of a company, the Liquidator realized ₹10 Crores from the sale of assets. The dues are: Secured Creditor (holding a charge on the asset sold): ₹8 Crores; Workmen's Dues: ₹4 Crores; Income Tax Dues: ₹2 Crores. The secured creditor demands full payment of ₹8 Cr first. Determine the distribution.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 326 states that **workmen's dues** and **debts due to secured creditors** (to the extent such debts rank pari passu with workmen's dues) shall be paid in priority to all other debts. If the assets are insufficient to meet them in full, they shall abate in equal proportions.

Computation:
Total Funds available = ₹10 Crores.
Total Overriding Debts = ₹8 Cr (Secured) + ₹4 Cr (Workmen) = ₹12 Crores.
Since funds (10 Cr) are insufficient to pay 12 Cr, they will be paid proportionately in the ratio of 8:4 (i.e., 2:1).

Secured Creditor receives = (2/3) x 10 Cr = **₹6.67 Crores**.
Workmen receive = (1/3) x 10 Cr = **₹3.33 Crores**.
Income Tax dues (Sec 327) receive **NIL**, as overriding preferential payments exhausted the entire pool.

Case Study 17: Appeal against NCLT Order (Sec 421)

FACTS OF THE CASE:

The NCLT passed a winding-up order against Sigma Ltd on 1st March. The management of Sigma Ltd filed an appeal before the NCLAT on 20th May. Will the NCLAT admit the appeal?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 421, any person aggrieved by an order of the Tribunal (NCLT) may file an appeal to the Appellate Tribunal (NCLAT) within **45 days** from the date on which a copy of the order is made available to the aggrieved person. The NCLAT may entertain an appeal after the expiry of the 45 days, but within a further period not exceeding **45 days**, if it is satisfied that there was sufficient cause for the delay.

Analysis:
Normal 45 days from 1-Mar expired on 15-April.
Extended 45 days grace period expired on 30-May.
The appeal was filed on 20-May, which falls inside the extended grace period.

Conclusion: The NCLAT will not automatically admit the appeal. It has the discretionary power to admit it only if Sigma Ltd proves there was 'sufficient cause' for not filing within the original 45-day window. If sufficient cause is proved, it will be admitted.

Case Study 18: Appeal to Supreme Court (Sec 423)

FACTS OF THE CASE:

Aggrieved by an order of the NCLAT confirming an oppression charge, a director wants to appeal to the Supreme Court arguing that the NCLAT's appreciation of facts was flawed and demanding a re-evaluation of evidence. Is this appeal maintainable?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 423, any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any **question of law** arising out of such order.

Conclusion: The appeal is not maintainable. Appeals to the Supreme Court from NCLAT orders are strictly restricted to 'questions of law'. The Supreme Court will not re-evaluate evidence or interfere with findings of fact established by the NCLT/NCLAT. The director's argument based on factual appreciation will be dismissed in limine.

Case Study 19: Compounding of Offences (Sec 441)

FACTS OF THE CASE:

The Managing Director of a company was charged with an offence under the Companies Act punishable with imprisonment or fine. The maximum fine prescribed is ₹15 Lakhs. He filed an application to the NCLT for compounding the offence. Does NCLT have jurisdiction?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 441, any offence punishable under the Act with fine only, or with fine or imprisonment, or with both, may be compounded. However, the jurisdiction depends on the maximum amount of fine:
- If the maximum amount of fine **does not exceed ₹25 Lakhs**, the compounding authority is the **Regional Director (RD)** or any officer authorized by the Central Government.
- If the maximum fine exceeds ₹25 Lakhs, the authority is the NCLT.

Conclusion: Since the maximum fine prescribed for the offence is ₹15 Lakhs (which is ≤ ₹25 Lakhs), the NCLT does not have jurisdiction. The application for compounding must be filed before the Regional Director (RD).

Case Study 20: Offences Non-Compoundable

FACTS OF THE CASE:

A director is charged with an offence punishable with imprisonment AND fine under the Companies Act. Can this offence be compounded by paying the maximum prescribed fine?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 441(6) explicitly states that any offence which is punishable under this Act with **imprisonment only** or with **imprisonment and also with fine** shall NOT be compoundable.

Conclusion: The offence cannot be compounded. The director will have to face trial before the Special Court or the Magistrate. Compounding is only available for offences punishable with 'fine only' or 'imprisonment OR fine'.

Case Study 21: Formation of Producer Company (Sec 378C)

FACTS OF THE CASE:

Eight individual farmers and one registered producer institution wish to form a Producer Company under the Companies Act. Can they legally incorporate the company?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 378C specifies that a Producer Company can be formed by:
(a) ten or more individuals, each of them being a producer; or
(b) two or more producer institutions; or
(c) a combination of ten or more individuals and producer institutions.

Analysis: The proposal involves 8 individuals and 1 institution.

Conclusion: They cannot incorporate the Producer Company. They fail condition (a) as individuals are less than 10, fail condition (b) as institutions are less than 2, and fail condition (c) as the combination of individuals is less than 10. They need at least two more individual farmers or one more producer institution to meet the minimum incorporation threshold.

Case Study 22: Voting Rights in Producer Company (Sec 378D)

FACTS OF THE CASE:

In a Producer Company formed by 50 individual farmers, Farmer A holds 40% of the share capital while Farmer B holds 1%. During a general meeting, Farmer A demands voting rights proportionate to his shareholding. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 378D explicitly lays down the voting rights in a Producer Company. It overrides normal corporate voting rules by stating that in a case where the membership consists solely of individual members, the voting rights shall be based on a single vote for every member (**one member, one vote**), irrespective of his shareholding or patronage.

Conclusion: Farmer A's demand is legally invalid. Regardless of holding 40% of the capital, Farmer A has exactly one vote, equal to Farmer B who holds 1%. The cooperative principle of democratic control strictly applies to Producer Companies comprising individuals.

Case Study 23: Objects of Producer Company (Sec 378B)

FACTS OF THE CASE:

A Producer Company incorporated for harvesting and marketing agricultural produce wants to amend its Memorandum of Association (MOA) to start a real estate business for its members. Can it do so?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 378B strictly ring-fences the objects of a Producer Company. The objects must relate to all or any of the following matters concerning primary produce: production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce, or processing, manufacture, financing of producer activities, etc.

Conclusion: The Producer Company cannot amend its MOA to include real estate business. Engaging in real estate is ultra vires the statutory objects permitted under Section 378B, as it does not relate to 'primary produce' or activities ancillary to it.

Case Study 24: Mediation and Conciliation Panel (Sec 442)

FACTS OF THE CASE:

Two warring factions of shareholders in a company filed an oppression petition before the NCLT. Before the hearings commenced, both parties applied to the NCLT to refer the matter for mediation. Can the NCLT oblige under the Companies Act?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 442 provides that the Central Government shall maintain a panel of experts called the Mediation and Conciliation Panel. Any of the parties to the proceedings may, at any time during the proceedings before the Central Government, Tribunal (NCLT), or Appellate Tribunal, apply for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel. The Tribunal itself can also *suo motu* refer the matter.

Conclusion: Yes, the NCLT can oblige. If both parties consent, the NCLT will refer the dispute to the Mediation and Conciliation Panel. The Panel must dispose of the matter within 3 months and forward its recommendation to the Tribunal.

Case Study 25: Liability of Officers in Winding Up (Misfeasance - Sec 336)

FACTS OF THE CASE:

During the winding up of a company, the Liquidator discovers that a former director misapplied company funds to buy a personal yacht 2 years prior to the winding up order. Can the NCLT take action against him in the winding-up proceedings?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 336 (Assess damages against delinquent directors), if in the course of winding up it appears that any past or present director, manager, or liquidator has misapplied, retained, or become liable or accountable for any money or property of the company, or has been guilty of any misfeasance or breach of trust, the Tribunal may, on the application of the Official Liquidator or creditor, examine into the conduct of the person.

Conclusion: The NCLT has full jurisdiction. The Tribunal can compel the former director to repay or restore the money (value of the yacht) with interest at such rate as the Tribunal thinks just, or to contribute such sum to the assets of the company by way of compensation for the misapplication or misfeasance.

Summary & Key Takeaways for Examination Day

1. **Compromise & Arrangements (Sec 230):** 75% in value of those present & voting must approve. Objections limited to those holding ≥10% equity or ≥5% debt.
2. **Fast Track Merger (Sec 233):** Bypasses NCLT. Solely for Small Companies, Startups, and Holding-WOS. Approved by 90% shareholders and 90% creditors. RD/CG registers the scheme.
3. **Oppression & Mismanagement (Sec 241/244):** Eligibility threshold is 100 members or 1/10th of total members, or 10% of issued capital. NCLT can waive this requirement. NCLT's termination of MD agreements u/s 242 bars any compensation claim u/s 243.
4. **Winding Up by Tribunal (Sec 271):** Only on specific grounds (Special resolution, National security, Fraud, 5-year default in filing financials, Just & Equitable). Inability to pay debts is now strictly under IBC, 2016.
5. **Overriding Preferential Payments (Sec 326):** Workmen's dues and Secured Creditors rank pari-passu above all other statutory/tax dues.
6. **Appeals Hierarchy:** NCLT -> NCLAT (within 45 days) -> Supreme Court (within 60 days, strictly on questions of law).
7. **Compounding (Sec 441):** Only 'Fine only' or 'Fine OR imprisonment' offences. RD compounds if max fine ≤ ₹25L; NCLT compounds if > ₹25L.
8. **Producer Companies:** Hybrid of cooperative and corporate. Individual voting is strictly "One member, One vote" regardless of shareholding volume.

--- End of Module I (Sections D, E, F & G) Detailed Guide ---

ICMAI PAPER 13

CORPORATE AND ECONOMIC LAWS

PART 4: MODULE II (IBC, 2016)

Insolvency and Bankruptcy Code, 2016
CIRP, PPIRP, Liquidation & Fast Track
(Comprehensive Theory + 25 Solved Exam Cases)

Target Examination: December 2026
Syllabus Framework: ICMAI 2022

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Section A: Overview and Institutional Framework

1. The Four Pillars of IBC

The Insolvency and Bankruptcy Code, 2016 rests on a robust institutional architecture comprising four key pillars:

1. **Insolvency and Bankruptcy Board of India (IBBI):** The apex regulatory body responsible for overseeing the entire insolvency process and regulating IPs, IPAs, and IUs.
2. **Adjudicating Authority (AA):** The judicial backbone. **NCLT** has jurisdiction over companies and LLPs, while the **DRT** (Debt Recovery Tribunal) handles individuals and partnership firms. Appeals flow to NCLAT and DRAT respectively, and finally to the Supreme Court.
3. **Insolvency Professionals (IPs) & Agencies (IPAs):** Licensed professionals who act as Interim Resolution Professionals (IRP), Resolution Professionals (RP), or Liquidators. IPAs are frontline regulators that enroll and monitor IPs.
4. **Information Utilities (IUs):** Centralized electronic repositories (like NeSL) that store verified financial information and records of debt/default, eliminating disputes over the existence of a default.

2. Threshold Limits for Triggering IBC (Section 4)

The Code is designed to prevent frivolous litigation. Over time, the Central Government has drastically modified the minimum default amount required to trigger the insolvency process.

Type of Proceeding	Statutory Minimum Default Threshold
Standard CIRP (Sections 7, 9, 10)	**₹1 Crore** (Increased from ₹1 Lakh via notification to protect companies from minor operational defaults).
Pre-Packaged Insolvency (PPIRP) for MSMEs	**₹10 Lakhs** (Under Chapter III-A, Sec 54A, specifically to assist distressed but viable MSMEs).

Clubbing of Causes of Action: In cases of operational debts arising from independent, project-wise contracts (e.g., real estate security services), multiple distinct defaults cannot be artificially clubbed together merely to cross the ₹1 Crore threshold. The NCLAT strictly scrutinizes if a unified ledger was maintained.

Section B: Corporate Insolvency Resolution Process (CIRP)

3. Initiation of CIRP (Sections 7, 8, 9, 10)

CIRP can be triggered by three distinct entities against a Corporate Debtor (CD):

- **Section 7 - Financial Creditor (FC):** A creditor to whom a 'financial debt' is owed (banks, bondholders, homebuyers). Needs to establish debt and default. The AA has 14 days to ascertain the existence of a default from the records of an IU or other evidence.
- **Section 8 & 9 - Operational Creditor (OC):** A creditor supplying goods or services, including employees and the Government.
    - *Prerequisite (Sec 8):* Must serve a **10-day Demand Notice** on the CD.
    - *Dispute Exemption:* If the CD proves a **"pre-existing dispute"** (e.g., quality complaints prior to the demand notice), the NCLT must reject the Sec 9 application. The dispute must be genuine, not a spurious or patently feeble defense *(Mobilox Innovations ruling)*.
- **Section 10 - Corporate Applicant:** The Corporate Debtor itself can initiate CIRP voluntarily, provided it passes a **Special Resolution** (75% majority) in a general meeting approving such filing.

4. Timelines under CIRP (Section 12)

> The CIRP must mandatorily be completed within **180 days** from the date of admission of the application. The NCLT can grant a one-time extension of up to **90 days** if a resolution is passed by the CoC with a 66% voting share.
>
> **Absolute Outer Limit:** The entire process, including any extensions and the time taken in legal proceedings, MUST be completed within **330 days**. If not resolved within 330 days, the CD is mandatorily sent into liquidation.

5. Moratorium (Section 14)

Upon admission, a calm period called "Moratorium" is declared. During this period:

- Institution or continuation of pending suits or proceedings against the CD is prohibited.
- Transferring, encumbering, alienating, or disposing of assets is barred.
- Any action to foreclose, recover, or enforce any security interest (including SARFAESI) is suspended.
- Recovery of any property by an owner/lessor where the property is occupied by the CD is prohibited.

Exceptions: Criminal proceedings (like Sec 138 of Negotiable Instruments Act against directors), invocation of bank guarantees, and essential supply contracts are not covered by the moratorium.

6. Committee of Creditors (CoC) & Voting Thresholds

The CoC is the supreme decision-making body during CIRP, comprising exclusively of **Financial Creditors**. Related parties to the CD have no right of representation, participation, or voting in the CoC.

Nature of Decision	Required Voting Share (% of total FCs)
Routine decisions by CoC	> **50%** (Majority)
Approval of Resolution Plan (Sec 30(4))	**≥ 66%**
Replacement of IRP with RP (Sec 22)	**≥ 66%**
Decision to Liquidate before 180 days (Sec 33)	**≥ 66%**
Withdrawal of application after admission (Sec 12A)	**≥ 90%**

7. Ineligibility to be a Resolution Applicant (Section 29A)

Section 29A acts as a firewall to prevent defaulting promoters from buying back their company at a massive discount. Persons disqualified include:

- Undischarged insolvents or wilful defaulters.
- Persons whose accounts have been classified as **Non-Performing Assets (NPA)** for more than 1 year prior to CIRP initiation, *unless they clear all overdue amounts with interest before submitting the plan.*
- Convicted for offences punishable with imprisonment for 2 years or more.
- Disqualified to act as a director under the Companies Act.
- Persons prohibited by SEBI from trading in securities.
- Any connected person/related party of the above.

Section C & D: Liquidation, PPIRP & Fast Track

8. Triggers for Liquidation (Section 33)

> Liquidation is the last resort. The NCLT will pass a liquidation order if:
> 1. No resolution plan is received before the expiry of the maximum CIRP period.
> 2. The NCLT rejects the resolution plan for non-compliance with the Code.
> 3. The CoC, with a ≥66% voting share, explicitly decides to liquidate the CD at any time before the confirmation of the resolution plan.
> 4. The CD contravenes the terms of an approved resolution plan (any aggrieved party can apply).

9. The Waterfall Mechanism (Section 53)

The proceeds from the sale of liquidation assets must be distributed in the following strict hierarchy. No subsequent category is paid until the previous category is paid in full:

1. **Rank 1:** Insolvency resolution process costs and liquidation costs paid in full.
2. **Rank 2 (Pari Passu):** Workmen's dues for **24 months** preceding the liquidation commencement date AND debts owed to a **Secured Creditor** who has relinquished security to the liquidation estate.
3. **Rank 3:** Wages and unpaid dues owed to employees (other than workmen) for **12 months**.
4. **Rank 4:** Financial debts owed to **Unsecured Creditors**.
5. **Rank 5 (Pari Passu):** Amounts due to the Central/State Government (for the whole or part of **2 years** preceding liquidation) AND debts owed to a Secured Creditor for any amount unpaid following the enforcement of security interest outside liquidation.
6. **Rank 6:** Any remaining debts and dues.
7. **Rank 7:** Preference shareholders.
8. **Rank 8:** Equity shareholders or partners.

10. Avoidance Transactions (The Look-Back Period)

The RP/Liquidator can apply to NCLT to reverse certain transactions to maximize the asset pool:

Type of Transaction	Look-Back Period (Related Party)	Look-Back Period (Others)
Preferential (Sec 43): Preferring one creditor over others.	2 Years preceding insolvency	1 Year preceding insolvency

Undervalued (Sec 45): Asset sold significantly below FMV.	2 Years preceding insolvency	1 Year preceding insolvency
Extortionate Credit (Sec 50): Exorbitant interest rates.	2 Years	2 Years
Fraudulent Trading (Sec 66): Intent to defraud creditors.	No Time Limit	No Time Limit

11. Pre-Packaged Insolvency Resolution Process (PPIRP) - Sec 54A to 54P

Introduced specifically to assist MSMEs. It provides a faster, debtor-in-possession model.

Eligibility: Corporate debtor must be a registered MSME. Default threshold is **₹10 Lakhs**.
Initiation: Only the Corporate Debtor can initiate it, post-approval by shareholders (Special Resolution) and unrelated Financial Creditors (66% by value).
Control: Unlike CIRP (Creditor-in-control), PPIRP relies on **Debtor-in-Possession** (Promoters continue to run the business under RP supervision).
Timeline: The entire process must conclude within **120 days**. The base resolution plan is submitted by the CD within 90 days, which can be challenged via a 'Swiss Challenge' mechanism if it impairs operational creditors.

12. Fast Track CIRP (Section 55) & Voluntary Liquidation (Section 59)

- **Fast Track CIRP:** Must conclude within **90 days** (extendable by 45 days). Applicable only to: (a) Small Companies, (b) Startups, or (c) Unlisted companies with total assets not exceeding ₹1 Crore.
- **Voluntary Liquidation:** A solvent company can liquidate voluntarily if the majority of directors submit a **Declaration of Solvency** stating the company has no debts (or can pay them fully). Approved by a Special Resolution of members.

Case Study 1: Sec 4 Threshold - Interest Component

FACTS OF THE CASE:

Bank A provided a loan to XYZ Ltd. XYZ Ltd defaulted. The principal outstanding is ₹85 Lakhs, and the interest accrued as per the loan agreement is ₹25 Lakhs. Total default is ₹1.10 Crores. XYZ Ltd objects to the Sec 7 petition arguing the 'principal' default does not cross the ₹1 Crore threshold. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 4 of the IBC, the minimum amount of default to trigger CIRP is ₹1 Crore. Under Section 3(11), 'debt' means a liability or obligation in respect of a claim which is due from any person and **includes interest**.

Conclusion: The objection by XYZ Ltd is legally invalid. Since the loan agreement explicitly provides for interest, the interest component forms an integral part of the debt. The total defaulted amount (Principal + Interest) is ₹1.10 Crores, which successfully breaches the ₹1 Crore statutory threshold. The Sec 7 petition is maintainable.

Case Study 2: Sec 4 Threshold - Clubbing Project-wise Work Orders

FACTS OF THE CASE:

A security agency provided services to a real estate developer across three different project sites under three independent work orders. The developer defaulted on all three. The defaults are: Site A (₹40L), Site B (₹35L), and Site C (₹30L). The agency maintained separate site-wise ledgers. To meet the IBC threshold, the agency clubs them and files a Sec 9 petition for ₹1.05 Crores. Is the petition maintainable?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: As established by recent NCLAT jurisprudence, the threshold of ₹1 Crore under Section 4 must be met on a singular cause of action unless a consolidated running ledger account is maintained by mutual agreement.

Conclusion: The petition is not maintainable. Since the services were rendered under independent, project-wise contracts with site-specific ledgers, they constitute separate causes of action. The operational creditor cannot artificially club distinct and independent invoices from different projects simply to cross the ₹1 Crore threshold. Since no individual project default crosses ₹1 Crore, the NCLT will reject the application.

Case Study 3: Initiation by Financial Creditor - Need for Default

FACTS OF THE CASE:

Mr. A, a financial creditor, gave a loan of ₹2 Crores to Beta Ltd. The loan is repayable on 31st December 2026. However, in June 2026, Beta Ltd publicly announced severe liquidity issues. Mr. A immediately filed a Section 7 petition anticipating a future default. Will NCLT admit it?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 7(1) clearly states that a financial creditor may file an application for initiating CIRP against a corporate debtor **when a default has occurred**. Section 3(12) defines 'default' as non-payment of debt when whole or any part or installment of the amount of debt has become **due and payable** and is not paid.

Conclusion: The NCLT will reject the petition. Anticipatory or prospective defaults do not trigger the IBC. Since the repayment date is 31st December 2026, the debt is not yet 'due and payable' in June 2026. No default has occurred in the eyes of the law.

Case Study 4: Sec 8 Demand Notice - Pre-existing Dispute (Mobilox Innovations)

FACTS OF THE CASE:

Operational Creditor (OC) sent an invoice of ₹1.5 Crores to Corporate Debtor (CD) on 1st May. On 10th May, CD emailed OC stating the goods were highly defective and rejected the invoice. On 1st June, OC sent a Sec 8 Demand Notice. On 15th June, OC filed a Sec 9 petition. Decide the fate of the petition.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 8, an OC must serve a demand notice. The CD has 10 days to bring to the notice of the OC the existence of a **dispute**. As per the landmark Supreme Court ruling in *Mobilox Innovations*, if there is a 'pre-existing dispute' (a dispute existing prior to the receipt of the demand notice), the NCLT must reject the application.

Analysis: The email sent on 10th May clearly establishes that a genuine dispute regarding the quality of goods existed well before the demand notice was served on 1st June. The defense is plausible and not a patently feeble invention.

Conclusion: The NCLT lacks jurisdiction to act as a civil court to decide the merits of the quality dispute. Due to the presence of a pre-existing dispute, the Section 9 petition will be summarily rejected.

Case Study 5: Corporate Applicant (Sec 10) - Approval Requirements

FACTS OF THE CASE:

The Board of Directors of Gamma Ltd unanimously passed a board resolution to file an application under Section 10 to initiate CIRP against itself due to a ₹5 Crore default. The shareholders were not consulted. Will the NCLT admit the application?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 10(3)(c) strictly mandates that the corporate applicant must furnish a **Special Resolution** passed by the shareholders of the corporate debtor (or a resolution passed by at least three-fourths of the total number of partners of the corporate debtor) approving the filing of the application.

Conclusion: A mere Board Resolution is legally insufficient. Since Gamma Ltd failed to convene a general meeting and pass a Special Resolution (75% majority), the NCLT will reject the Section 10 application for failing to comply with the statutory prerequisite.

Case Study 6: Moratorium (Sec 14) vs Criminal Proceedings

FACTS OF THE CASE:

After the admission of CIRP and declaration of Moratorium against Delta Ltd, a supplier initiated criminal proceedings against the Managing Director of Delta Ltd under Section 138 of the Negotiable Instruments Act for a bounced cheque. The MD claims immunity citing Section 14 Moratorium. Advise.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 14 declares a moratorium prohibiting the institution or continuation of suits or proceedings **against the corporate debtor**.

Judicial Interpretation: The Supreme Court has unequivocally clarified that the moratorium under Section 14 applies only to the Corporate Debtor. It does **not** extend to the natural persons, i.e., the directors, promoters, or signatories of the cheque. Furthermore, criminal proceedings are generally not stayed by the IBC moratorium.

Conclusion: The MD's claim of immunity is legally invalid. The criminal proceedings under Section 138 of the NI Act against the Managing Director in his personal capacity as the signatory will continue unabated.

Case Study 7: Moratorium (Sec 14) vs Invocation of Bank Guarantee

FACTS OF THE CASE:

A contractor failed to complete a project for the Government. The Government invoked a Performance Bank Guarantee (PBG) issued on behalf of the contractor. The contractor went into CIRP the next day, and the IRP claims the PBG cannot be invoked due to the Moratorium. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 14(3)(b) explicitly provides a statutory exception to the moratorium. It states that the provisions of the moratorium shall not apply to **a surety in a contract of guarantee to a corporate debtor**.

Conclusion: A Performance Bank Guarantee is an independent contract between the bank and the beneficiary. It is not an asset of the corporate debtor. Therefore, the invocation of the Bank Guarantee is perfectly legal and is not blocked by the Section 14 Moratorium. The IRP's claim will be dismissed.

Case Study 8: Committee of Creditors - Related Party Status

FACTS OF THE CASE:

Theta Ltd is undergoing CIRP. Its financial creditors are SBI (₹50 Cr), HDFC (₹30 Cr), and Theta Holdings Pvt Ltd, which is its holding company (₹20 Cr). Theta Holdings wants to vote in the CoC to approve a resolution plan. Can it do so?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under the first proviso to Section 21(2), a financial creditor or the authorized representative of the financial creditor, if it is a **related party** of the corporate debtor, shall not have any right of representation, participation, or voting in a meeting of the Committee of Creditors (CoC).

Conclusion: Theta Holdings Pvt Ltd is the holding company and undeniably a related party to Theta Ltd. Therefore, despite holding 20% of the financial debt, it is completely barred from participating or voting in the CoC. The voting share will be calculated exclusively between SBI (62.5%) and HDFC (37.5%).

Case Study 9: Withdrawal of Application (Sec 12A) Voting Threshold

FACTS OF THE CASE:

After the constitution of the CoC, the promoters of the Corporate Debtor offered a full settlement to the original applicant. The applicant moved to withdraw the CIRP under Section 12A. The CoC voted on the withdrawal: 85% voted in favor, 15% opposed. Will the NCLT allow the withdrawal?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 12A states that the Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of **ninety per cent (90%)** voting share of the committee of creditors.

Conclusion: The withdrawal requires a super-majority of 90%. Since only 85% of the CoC voted in favor, the statutory threshold is not met. The NCLT will reject the Section 12A withdrawal application, and the CIRP will continue.

Case Study 10: Approval of Resolution Plan (Sec 30(4))

FACTS OF THE CASE:

Three resolution plans were submitted for a company. Plan A received 60% votes, Plan B received 65%, and Plan C received 70%. The RP submitted Plan C to the NCLT for final approval. A dissenting financial creditor (holding 15%) challenges it, saying it requires unanimous approval. Is he correct?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 30(4), the Committee of Creditors may approve a resolution plan by a vote of **not less than sixty-six per cent (66%)** of voting share of the financial creditors.

Conclusion: The dissenting creditor is incorrect. Unanimous approval is never required under the IBC for a resolution plan. Since Plan C secured 70% of the voting share, it comfortably breaches the 66% statutory threshold. The RP's submission of Plan C to the NCLT is perfectly legal and binding on the dissenting minority.

Case Study 11: Sec 29A Disqualification - Clearing NPA Overdues

FACTS OF THE CASE:

Mr. Promoter's company account was classified as an NPA by the banks 18 months prior to the initiation of CIRP. He submits a resolution plan to buy back the company. The RP rejects it citing Section 29A. Mr. Promoter immediately pays off all the overdue interest and principal to the bank and resubmits the plan. Is he eligible now?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 29A(c) disqualifies a person from being a resolution applicant if at the time of submission of the resolution plan, he holds an account classified as a non-performing asset (NPA) for a period of one year or more.
However, a proviso exists: the person shall be eligible to submit a resolution plan if such person makes payment of **all overdue amounts with interest thereon and charges** relating to the NPA account **before submission of the resolution plan**.

Conclusion: Once Mr. Promoter cleared the entire overdue amount with interest, the taint of the NPA is washed away for the purpose of the Code. He regains his eligibility and the RP must accept his resubmitted resolution plan for the CoC's consideration.

Case Study 12: CIRP Timelines & Exceptional Extensions

FACTS OF THE CASE:

The CIRP of a complex manufacturing giant has consumed 310 days (including standard extensions). The NCLT litigation takes another 30 days. The total time elapsed is 340 days. The CoC has finally approved a plan and seeks NCLT's nod. Will the NCLT reject it and order liquidation due to the 330-day breach?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 12(3) explicitly mandates that the CIRP shall mandatorily be completed within a period of **330 days** from the insolvency commencement date, including any extension of the period of CIRP and the time taken in legal proceedings.

Judicial Precedent: In *Committee of Creditors of Essar Steel India Ltd vs Satish Kumar Gupta*, the Supreme Court struck down the word 'mandatorily' as unconstitutional. The Court held that while 330 days is the general rule, the NCLT/NCLAT has the inherent power to extend this timeline in **exceptional cases** where the delay was caused solely by the Adjudicating Authority/litigation and it would be highly detrimental to the creditors to liquidate a viable company.

Conclusion: The NCLT will not automatically order liquidation. Using the Supreme Court precedent, it will likely condone the 10-day delay beyond the 330-day limit and approve the resolution plan to maximize the value of assets.

Case Study 13: Decision to Liquidate Before 180 Days

FACTS OF THE CASE:

On the 90th day of the CIRP, the CoC realizes that the company's assets are obsolete and no buyer will ever submit a viable resolution plan. They pass a resolution with 70% voting share to liquidate the company immediately to save CIRP costs. The suspended directors object, stating the CoC must wait for the full 180-day period. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 33(2) empowers the Committee of Creditors to take the decision to liquidate the corporate debtor **at any time during the corporate insolvency resolution**

process, but before confirmation of the resolution plan, provided it is approved by not less than **sixty-six per cent (66%)** of the voting share.

Conclusion: The directors' objection is legally void. The CoC is not required to uselessly burn through CIRP costs for 180 days if commercial wisdom dictates the company is unviable. Since the resolution was passed with 70% (>66%), the NCLT will accept the CoC's intimation and immediately pass a liquidation order.

Case Study 14: Waterfall Mechanism (Sec 53) - Workmen Dues

FACTS OF THE CASE:

In a liquidation process, total sale proceeds are ₹50 Crores. Liquidation costs are ₹5 Crores. Workmen's dues for the preceding 24 months are ₹20 Crores. Secured Creditors (who relinquished their security) are owed ₹70 Crores. How will the proceeds be distributed?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under the Section 53 Waterfall Mechanism:
Rank 1: Liquidation Costs.
Rank 2 (Pari Passu): Workmen's dues for 24 months AND Debts owed to a secured creditor (relinquished security).

Computation:
Total Proceeds = ₹50 Cr.
Rank 1 payment = ₹5 Cr.
Balance available for Rank 2 = 50 - 5 = ₹45 Crores.
Total Rank 2 claims = ₹20 Cr (Workmen) + ₹70 Cr (Secured) = ₹90 Crores.
Since ₹45 Cr is insufficient to pay ₹90 Cr, the funds abate in equal proportions (Ratio 20:70 or 2:7).
Workmen receive = (2/9) x ₹45 Cr = **₹10 Crores**.
Secured Creditors receive = (7/9) x ₹45 Cr = **₹35 Crores**.

Case Study 15: Waterfall Mechanism - Secured Creditor Enforcing Security outside IBC

FACTS OF THE CASE:

A Secured Creditor chose not to relinquish its security. It sold the mortgaged factory outside the liquidation process for ₹40 Crores. However, the total debt owed was ₹60 Crores. What happens to the ₹20 Crores shortfall? Where does it rank in Sec 53?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 52, a secured creditor may choose to realize its security interest outside the liquidation process. However, if the proceeds are insufficient, the unpaid debt falls into the Section 53 waterfall.

Ranking Analysis: Under Section 53(1)(e)(ii), any amount that remains unpaid following the enforcement of security interest ranks at **Rank 5**, standing *pari passu* with Central and State Government dues.

Conclusion: The ₹20 Crore deficit loses its supreme secured status (Rank 2) because the creditor chose to enforce the security outside the IBC. It plummets to Rank 5 and will only be paid if funds remain after clearing workmen, employees, and unsecured financial creditors.

Case Study 16: PPIRP for MSMEs - Default Threshold

FACTS OF THE CASE:

An operational creditor wishes to initiate a Pre-Packaged Insolvency Resolution Process (PPIRP) against an MSME company for a default of ₹50 Lakhs. Is this legally permissible under Chapter III-A?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Chapter III-A (PPIRP) was introduced specifically for MSMEs with a minimum default threshold of **₹10 Lakhs**. However, there is a fundamental restriction on *who* can initiate it. Under Section 54C, an application for initiating PPIRP can be filed **only by the Corporate Debtor itself** (Corporate Applicant), not by a financial or operational creditor.

Conclusion: While the ₹50 Lakh default successfully breaches the ₹10 Lakh threshold for PPIRP, the Operational Creditor **cannot** legally initiate the pre-pack process. The OC can only send a demand notice and file for standard CIRP (but cannot, as standard CIRP requires a ₹1 Crore default). Thus, the OC is currently blocked from using the IBC entirely for a ₹50L default.

Case Study 17: PPIRP - Approval Prerequisites

FACTS OF THE CASE:

The Board of an MSME decides to file for PPIRP. They pass a Board Resolution and immediately file the application with the NCLT. Will it be admitted?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 54A imposes rigorous pre-filing conditions for PPIRP to ensure it is not misused by promoters:
1. The members of the corporate debtor must pass a **Special Resolution** (75%) approving the filing.
2. The corporate debtor must obtain prior approval from its **unrelated financial creditors** representing not less than **66% in value** of the financial debt.

Conclusion: The NCLT will reject the application. A simple Board Resolution is insufficient. The MSME must secure a Special Resolution from shareholders and a 66% affirmative vote from its unrelated financial creditors before approaching the Adjudicating Authority.

Case Study 18: PPIRP - Debtor in Possession vs Creditor in Control

FACTS OF THE CASE:

During a PPIRP, the Resolution Professional takes complete control of the MSME, suspending the Board of Directors. The promoters challenge this action, citing differences between CIRP and PPIRP. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: The fundamental philosophy of PPIRP under Section 54H is the **'Debtor-in-Possession'** model. Unlike standard CIRP (where Section 17 suspends the Board and the RP takes over), in a PPIRP, the management of the affairs of the corporate debtor continues to vest with the Board of Directors/Promoters.

Conclusion: The promoters' challenge is valid. The RP has acted illegally. The RP's role in PPIRP is monitoring and supervisory, not managerial. The Board retains control unless the CoC specifically petitions the NCLT (u/s 54J with 66% vote) to vest the management with the RP due to fraud or gross mismanagement.

Case Study 19: Avoidance Transactions - Preferential Look-Back

FACTS OF THE CASE:

Company X was admitted into CIRP on 1-Oct-2025. The RP discovered that on 1-Dec-2023, the company repaid a massive unsecured loan to a sister concern (a related party), draining its cash reserves. Can the RP reverse this transaction as a preferential transaction?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 43 defines preferential transactions. The 'look-back' period for avoiding such transactions depends on the beneficiary's relationship with the corporate debtor:
- For unrelated parties: 1 year preceding the insolvency commencement date.
- For **related parties**: **2 years** preceding the insolvency commencement date.

Analysis: The insolvency commencement date is 1-Oct-2025. The 2-year look-back period for related parties extends back to 1-Oct-2023. The transaction occurred on 1-Dec-2023, falling squarely within the suspect period.

Conclusion: Yes, the RP can file an application before the NCLT under Section 43. The NCLT can order the sister concern to refund the entire amount back to Company X's accounts for the benefit of all creditors.

Case Study 20: Voluntary Liquidation (Sec 59) - Declaration of Solvency

FACTS OF THE CASE:

A debt-free technology company decides to shut down operations. The shareholders pass a special resolution to initiate Voluntary Liquidation u/s 59. The liquidator takes charge. However, the directors forgot to submit the 'Declaration of Solvency'. Assess the validity of the process.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 59(3) explicitly mandates that voluntary liquidation proceedings can only commence if a **Declaration of Solvency** is provided by the majority of the directors, verified by an affidavit, stating that the company has no debt (or will pay it fully) and is not being liquidated to defraud any person. This must be accompanied by audited financials of the previous two years.

Conclusion: The entire voluntary liquidation process is **void ab initio**. The submission of the Declaration of Solvency is a strict jurisdictional prerequisite. Without it, the shareholder resolution holds no legal standing under the IBC to commence voluntary liquidation.

Case Study 21: Fast Track CIRP (Sec 55) Timelines

FACTS OF THE CASE:

A recognized Startup Company with massive operational debts goes into Fast Track CIRP. On the 85th day, the RP realizes no resolution plan has been finalized and applies for a 90-day extension, citing the standard CIRP extension rules. Will the NCLT grant 90 days?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Chapter IV deals with Fast Track Corporate Insolvency Resolution Process. Section 56 states that the Fast Track CIRP must be completed within **90 days** from the insolvency commencement date.

Regarding extensions, the NCLT can extend the period only once, and such extension shall not exceed **45 days** (unlike the 90-day extension available in standard CIRP).

Conclusion: The NCLT will reject the request for a 90-day extension. It can grant a maximum extension of only 45 days, making the absolute statutory limit for a Fast Track CIRP 135 days. If no plan is finalized by then, the startup will face liquidation.

Case Study 22: Homebuyers as Financial Creditors

FACTS OF THE CASE:

A real estate developer defaulted on a project involving 500 allotted units. 3 homebuyers jointly filed a Section 7 petition to drag the developer into CIRP. Is the petition maintainable?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: While homebuyers (allottees of real estate projects) are legally classified as 'Financial Creditors' under the IBC, a specific amendment was inserted into Section 7 to prevent a single malicious homebuyer from stalling massive projects.

Threshold Rule: For financial creditors in a class (like homebuyers), an application under Section 7 must be filed jointly by not less than **100 allottees** of the same real estate project, OR not less than **10% of the total number of such allottees** under the same project, whichever is less.

Conclusion: The minimum threshold is 10% of 500 (50 allottees) or 100 allottees, whichever is less. Thus, a minimum of 50 homebuyers must apply jointly. Since only 3 homebuyers filed the petition, it lacks the statutory locus standi and will be rejected.

Case Study 23: Information Utility (NeSL) Record of Default

FACTS OF THE CASE:

A bank filed a Section 7 petition against a corporate debtor. The bank relied entirely on a 'Record of Default' issued by the National E-Governance Services Limited (NeSL), an Information Utility. The corporate debtor argues that NeSL records are not conclusive evidence in court. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision & Judicial View: Under the IBC framework, Information Utilities are centralized repositories of financial data. The Supreme Court has repeatedly affirmed that the record of default issued by an Information Utility (like NeSL) serves as **prima facie evidence** of the existence of a debt and a default.

Conclusion: The burden of proof shifts completely to the Corporate Debtor to produce incontrovertible documentary evidence proving the NeSL record is fabricated or inaccurate. If the CD fails to produce such evidence, the NCLT is bound to admit the Section 7 petition based solely on the NeSL Record of Default.

Case Study 24: Treatment of Government Dues (State Tax) in Liquidation

FACTS OF THE CASE:

The State Commercial Tax Department claimed priority over Secured Creditors during liquidation, arguing that the State VAT Act creates a 'first charge' on the property of the dealer. Does this state law override the Section 53 IBC Waterfall mechanism?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision & Precedent: Under Section 53, government dues rank at Rank 5, well below Secured Creditors (Rank 2). However, in the controversial *State Tax Officer v. Rainbow Papers Ltd.* judgment, the Supreme Court held that if a specific state statute (like the GVAT Act) creates a statutory 'first charge' on the assets of the company, the State becomes a **'Secured Creditor'**.

Conclusion: Under this specific precedent, the State Tax Department's claim elevates from Rank 5 (Govt Dues) to Rank 2 (Secured Creditor). Therefore, the Liquidator must treat the State Tax Department at par with the banks and financial institutions holding security interests.

Case Study 25: Fraudulent Trading (Sec 66) - Personal Liability

FACTS OF THE CASE:

During CIRP, the RP discovers that the directors continued to order raw materials on credit for 6 months despite knowing the company was irreversibly insolvent and had no means to pay, effectively defrauding new suppliers to pay off personal guarantees. Can the directors be held personally liable?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 66 deals with Fraudulent Trading or Wrongful Trading. If during CIRP or liquidation, it is found that business was carried on with intent to defraud creditors, the NCLT can order any person who were knowingly parties to the carrying on of the business in such a manner to make contributions to the assets of the corporate debtor.

Conclusion: Yes, the directors' actions of creating new debt with the knowledge of unavoidable insolvency constitutes wrongful/fraudulent trading. The RP can file an application u/s 66, and the NCLT can order the directors to be **personally liable** without any limitation, piercing the corporate veil to recover the defrauded amounts from their personal wealth.

Summary & Key Takeaways for Examination Day

1. **Thresholds:** CIRP = ₹1 Crore (Cannot club independent project defaults). PPIRP (MSME) = ₹10 Lakhs. Homebuyers = 100 allottees or 10% of class.
2. **Initiation:** Sec 7 (Financial Creditor) relies on fact of default. Sec 9 (Operational Creditor) requires a 10-day demand notice u/s 8 and fails if a genuine 'pre-existing dispute' exists (Mobilox).
3. **Moratorium (Sec 14):** Freezes all recovery actions against the corporate debtor. However, PBGs (Bank Guarantees) and personal criminal liability of directors (Sec 138 NI Act) are NOT protected.
4. **Voting Matrix (CoC):** Routine = 51%. Resolution Plan, Liquidation, replacing RP = 66%. Withdrawal of admitted case (Sec 12A) = 90%. Related parties have ZERO voting rights.
5. **Disqualification (Sec 29A):** Promoters of NPAs (>1 year) are banned from submitting plans unless they clear all overdue interest and principal before submission.
6. **Timelines:** Standard CIRP = 180 + 90 = 270 days. Absolute limit = 330 days (extendable only in exceptional cases by NCLT). Fast Track = 90 + 45 = 135 days. PPIRP = 120 days total.
7. **Waterfall Mechanism (Sec 53):** CIRP Costs -> Workmen (24m) & Relinquished Secured Creditors -> Employees (12m) -> Unsecured FCs -> Govt (2y) & Unpaid Secured Creditors.
8. **Avoidance Transactions:** Preferential and Undervalued = Look back 2 years for related parties, 1 year for unrelated. Fraudulent/Wrongful trading = No time limit, attracts unlimited personal liability.

--- End of Module II (IBC, 2016) Detailed Guide ---

ICMAI PAPER 13

CORPORATE AND ECONOMIC LAWS

PART 5: MODULE III (SECURITIES LAWS & SEBI)

SEBI Act, LODR, ICDR, SAST (Takeover), PIT (Insider Trading)
(Comprehensive Theory + 25 Solved Exam Cases)

Target Examination: December 2026
Syllabus Framework: ICMAI 2022

cmaknowledge.in

Section A: SEBI Act, 1992 & Regulatory Framework

1. Objectives and Powers of SEBI

The Securities and Exchange Board of India (SEBI) was established to **protect the interests of investors**, promote the development of, and regulate the securities market.
Quasi-Legislative, Executive, and Judicial Powers:

- **Legislative:** Drafts regulations (LODR, ICDR, etc.).
- **Executive:** Conducts investigations and inspections of books.
- **Judicial:** Passes rulings and orders (e.g., cease and desist orders, monetary penalties).

2. Investigation Powers (Section 11C)

SEBI has sweeping powers to order an investigation if it has reasonable grounds to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market.

- The Investigating Authority has powers akin to a civil court to summon persons, examine on oath, and demand the production of books and registers.
- **Search and Seizure:** The Investigating Authority can approach a Magistrate or Judge to authorize a search of premises and seizure of documents if it apprehends destruction of evidence.

3. Securities Appellate Tribunal (SAT) (Section 15K)

SAT is a statutory body established to hear and dispose of appeals against orders passed by SEBI, the Pension Fund Regulatory and Development Authority (PFRDA), and the Insurance Regulatory Development Authority of India (IRDAI).

Parameter	Statutory Requirement
Appeal to SAT	Aggrieved persons must file an appeal within **45 days** from the date of receiving the SEBI order. SAT can condone delays upon showing sufficient cause.
Civil Court Restriction	No civil court has jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer or SAT is empowered to determine (Section 15Y).
Appeal to Supreme Court	

	Any person aggrieved by any decision or order of the SAT may file an appeal to the Supreme Court within **60 days** (extendable by 60 days) ONLY on a **question of law** (Section 15Z).

Section B: SEBI (LODR) Regulations, 2015

The Listing Obligations and Disclosure Requirements (LODR) govern corporate governance norms for listed entities. Recent SEBI amendments calculate market capitalization thresholds based on an average of 6 months (July 1 to Dec 31) rather than a single day.

4. Board Composition (Regulation 17)

- **Optimum Combination:** Board shall have an optimum combination of executive and non-executive directors with at least **one woman director** (Top 1000 listed entities must have at least one **Independent Woman Director**).
- **Non-Executive Directors:** Not less than **50%** of the Board must comprise non-executive directors.
- **Independent Directors (ID):**
    - If the Chairperson is a regular non-executive director, at least **1/3rd** of the Board must be IDs.
    - If the Chairperson is an executive director, a promoter, or related to a promoter, at least **1/2 (50%)** of the Board must be IDs.

5. Board Committees

Committee	Composition	Meeting Frequency
Audit Committee (Reg 18)	Minimum 3 directors. **2/3rd must be Independent Directors**. All must be financially literate; at least one must have accounting/ financial management expertise. Chairperson must be an ID.	At least 4 times a year (Max gap of 120 days).
Nomination and Remuneration Committee (Reg 19)	Minimum 3 directors, all non-executive. At least **2/3rd must be Independent Directors**. Chairperson must be an ID.	At least once a year.
Risk Management Committee (Reg 21)	Applicable to top 1000 listed entities. Minimum 3 members, majority being Board members. At least 1 must be an Independent Director.	At least twice a year (Max gap **210 days** - updated 2024).

6. Related Party Transactions (RPT) (Regulation 23)

Material RPT Threshold: A transaction with a related party is material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds **₹1,000 Crore** or **10% of the annual consolidated turnover** of the listed entity, *whichever is lower*.

For SME Listed Entities (New 2024 Rule): Stricter materiality threshold of **Lower of ₹5 Crore or 10% of annual consolidated turnover** to curb fund diversion.

Approval: All RPTs require prior approval of the **Audit Committee**. Material RPTs require prior approval of shareholders through a resolution, and no related party shall vote to approve such resolutions.

7. Disclosure of Material Events (Regulation 30)

Listed entities must disclose material events to the stock exchanges as soon as reasonably possible and not later than **24 hours** from the occurrence of the event (or **12 hours** if the information emanates from within the listed entity).
Market Rumors (2024 Update): Top 100/250 listed entities must verify market rumors and confirm, deny, or clarify them only when the rumor causes a **material price movement**.

Section C: SEBI (ICDR) Regulations, 2018

The Issue of Capital and Disclosure Requirements regulate Initial Public Offers (IPO), Further Public Offers (FPO), Rights Issues, and Preferential Issues.

8. Eligibility Conditions for an IPO (Regulation 6)

An issuer can make an IPO if it satisfies ALL the following conditions:

1. **Net Tangible Assets:** At least **₹3 Crores** in each of the preceding 3 full years (of which not more than 50% are held in monetary assets).
2. **Operating Profit:** Average operating profit of at least **₹15 Crores**, calculated on a restated and consolidated basis, during the preceding 3 years, with operating profit in each of these 3 years.
3. **Net Worth:** At least **₹1 Crore** in each of the preceding 3 full years.
4. If the company changed its name within the last 1 year, at least 50% of the revenue for the preceding 1 full year is earned from the activity indicated by the new name.

> **Alternative Route (Book Building Route):** If a company fails the above profitability/asset criteria (e.g., tech startups), it can still launch an IPO provided the issue is made through the book-building process and at least **75%** of the net offer is allotted exclusively to Qualified Institutional Buyers (QIBs). If it fails to allot 75% to QIBs, the IPO must be refunded.

9. Minimum Promoter's Contribution & Lock-in (Regulations 14, 16)

- **Contribution:** The promoters of the issuer shall hold at least **20% of the post-issue capital**.
- **Shortfall (2024 Amendment):** If promoters fall short of 20%, non-individual public shareholders holding at least 5% of post-offer equity, or any entity forming part of the promoter group, may contribute to cover the shortfall in the minimum required contribution.
- **Lock-in Period:** The minimum promoter's contribution (20%) is locked in for a period of **18 months** (down from 3 years in standard cases) from the date of allotment. Promoters' holding in excess of 20% is locked in for **6 months** (down from 1 year). However, for project financing or capital expenditure, the lock-in remains 3 years and 1 year respectively.

10. Minimum Subscription (Regulation 45)

> The minimum subscription to be received in the issue shall not be less than **90% of the offer through the offer document** (excluding the Offer for Sale component). If 90% is not received, all application monies must be refunded within the prescribed time (usually 4 days from the issue closing date), failing which interest is payable @ 15% p.a.

11. Fast Track FPO

Allows listed companies to skip filing a draft offer document with SEBI to save time. Conditions include:
- Equity shares have been listed for at least 3 years.
- Average market capitalization of public shareholding is at least **₹1,000 Crores**.
- No show-cause notices issued by SEBI are pending.
- Trading of equity shares has not been suspended for any disciplinary reason in the last 3 years.

Section D: SEBI (SAST) Regulations, 2011 (Takeover Code)

The Substantial Acquisition of Shares and Takeovers (SAST) Regulations aim to ensure that minority shareholders get a fair exit opportunity whenever there is a substantial acquisition of shares or change in control of a listed company.

12. Trigger Points for Mandatory Open Offer

Regulation	Trigger Threshold	Mandatory Action
Reg 3(1): Initial Acquisition	Acquiring **25% or more** of voting rights.	Must make a public announcement of an Open Offer to acquire at least **26%** of total shares from public shareholders.
Reg 3(2): Creeping Acquisition	Acquirer already holds between 25% and 75%, and acquires more than **5% in a single financial year**.	Must make an Open Offer. (If acquisition is within the 5% limit per FY, it is creeping acquisition without an open offer, up to max 75%).
Reg 4: Change in Control	Acquisition of **Control** over the target company, irrespective of the % of shares acquired.	Must make an Open Offer to public shareholders.

13. The Open Offer Mechanics

- **Size of Offer:** Minimum **26%** of total shares of the target company.
- **Offer Price (Reg 8):** The highest of various parameters:
    1. Negotiated price under the agreement.
    2. Volume-weighted average price (VWAP) paid by the acquirer in the 52 weeks preceding the public announcement.
    3. Highest price paid by the acquirer in the 26 weeks preceding the PA.
    4. VWAP of the target's shares on the stock exchange for 60 trading days preceding the PA.
- **Escrow Account (Reg 17):** The acquirer must create an escrow account to guarantee performance.
    - For consideration up to ₹500 Crores: **25%** of the consideration.
    - For consideration exceeding ₹500 Crores: ₹125 Cr + **10%** of the amount exceeding ₹500 Cr.

14. Exemptions from Open Offer (Regulation 10)

Certain acquisitions are statutorily exempt from making an open offer, such as:

- Acquisition pursuant to a scheme of arrangement/amalgamation approved by an Indian court or NCLT.
- Inter-se transfer of shares among qualifying parties (e.g., immediate relatives, promoters holding shares for > 3 years, holding/subsidiary companies).
- Acquisition by lenders (banks/FIs) invoking pledge under loan agreements.
- Acquisition pursuant to an approved resolution plan under the Insolvency and Bankruptcy Code (IBC), 2016.

Section E: SEBI (PIT) Regulations, 2015

The Prohibition of Insider Trading regulations ensure a level playing field by preventing individuals with access to price-sensitive information from illegally exploiting it.

15. Definitions: UPSI, Insider & Connected Person

- **UPSI (Unpublished Price Sensitive Information):** Information relating to a company/ securities not generally available to the public, which upon becoming available, is likely to materially affect the price. Examples: Financial results, dividends, capital structure changes, M&A, key managerial changes.
- **Insider:** Any person who is (i) a connected person; or (ii) in possession of or having access to UPSI.
- **Connected Person:** Any person associated with the company directly or indirectly during the 6 months prior to the insider trade (e.g., directors, officers, employees, statutory auditors, legal advisors, holding/subsidiary companies, immediate relatives).

16. The Core Prohibitions (Regulation 3 & 4)

> **Communication Ban (Reg 3):** No insider shall communicate, provide, or allow access to any UPSI to any person, except in furtherance of legitimate purposes, performance of duties, or discharge of legal obligations.
>
> **Trading Ban (Reg 4):** No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of UPSI.
>
> **Defense:** The insider proves that the trade was executed pursuant to a pre-cleared **Trading Plan**.

17. Trading Plans (Regulation 5)

An insider who may be perpetually in possession of UPSI (like the CEO or CFO) can formulate a trading plan to execute trades. Strict conditions apply:

- The plan must be presented to the Compliance Officer for approval and public disclosure.
- **Cooling-off period:** No trading can commence earlier than **6 months** from the public disclosure of the plan.
- **Blackout period:** Trading is prohibited between the 20th trading day prior to the end of a financial period (quarter/year) for which results are to be announced, and the 2nd trading day after the disclosure of such financial results.

- The trading plan must entail trading for a period of not less than **12 months**.
- No overlapping of multiple trading plans is permitted.
- Once approved, the plan is **irrevocable**, and the insider must mandatorily implement it without deviation.

18. Structured Digital Database (SDD)

Every listed company must maintain a Structured Digital Database containing the names of persons with whom UPSI is shared, along with their PAN. The database must have adequate internal controls and time-stamping to ensure it is not tampered with, forming a critical digital trail for SEBI investigations.

Case Study 1: Powers of SEBI - Search and Seizure

FACTS OF THE CASE:

The SEBI Investigating Authority suspects that top executives of Delta Ltd are involved in a massive pump-and-dump scheme. To prevent destruction of digital evidence, the Investigating Authority directly orders its officers to search Delta Ltd's premises and seize hard drives. Delta Ltd challenges the seizure. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 11C(8) of the SEBI Act, 1992, the Investigating Authority has the power of search and seizure. However, this power is NOT absolute or direct. Where the authority has reasonable ground to believe that books, papers, or documents will be destroyed, altered, or secreted, the Investigating Authority must **make an application to the Magistrate or Judge of a designated court** in Mumbai for an order authorizing such search and seizure.

Conclusion: Delta Ltd's challenge is valid. The direct order by the Investigating Authority without obtaining a prior warrant/order from the designated Magistrate is illegal. The seized hard drives cannot be lawfully used as evidence, and SEBI must follow the statutory judicial process to execute search operations.

Case Study 2: Appeal against SEBI Order

FACTS OF THE CASE:

SEBI passed an order imposing a penalty of ₹5 Crores on Mr. Rajesh for insider trading on 1st March. The order was received by Mr. Rajesh on 5th March. On 10th May, Mr. Rajesh files an appeal before the Securities Appellate Tribunal (SAT). Will SAT admit the appeal?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 15T of the SEBI Act, any person aggrieved by an order of the Board (SEBI) may prefer an appeal to the SAT within a period of **45 days** from the date on which a copy of the order made by SEBI is received by him.

Analysis: The 45-day period begins from 5th March (receipt date) and expires on 19th April. The appeal filed on 10th May is delayed by 21 days.

Conclusion: SAT will not admit the appeal as a matter of right. However, a proviso to Section 15T empowers SAT to entertain an appeal after the expiry of 45 days if it is satisfied that there was **sufficient cause** for not filing it within that period. If Mr. Rajesh can prove a genuine reason (e.g., severe illness) for the 21-day delay, SAT may condone the delay and admit the appeal.

Case Study 3: Civil Court Jurisdiction over SEBI matters

FACTS OF THE CASE:

Aggrieved by an adjudication order passed by a SEBI officer imposing a ₹2 Crore penalty, Company X files a civil suit in the Delhi High Court seeking an injunction to stop SEBI from recovering the penalty. Will the civil court entertain the suit?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 15Y of the SEBI Act creates an absolute bar on the jurisdiction of civil courts. It states that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer appointed under this Act or a Securities Appellate Tribunal is empowered to determine.

Conclusion: The civil suit will be dismissed in limine. The Delhi High Court (in its civil jurisdiction) cannot grant an injunction. Company X's only legal recourse is to file a statutory appeal before the Securities Appellate Tribunal (SAT) under Section 15T.

Case Study 4: LODR - Independent Directors Composition

FACTS OF THE CASE:

The Board of Directors of Omega Ltd (a listed company) consists of 12 directors. The Chairperson of the Board is an Executive Director (who is also the promoter). Currently, the Board has 4 Independent Directors. Does this composition comply with SEBI (LODR) Regulations?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 17 of SEBI (LODR) Regulations, 2015 governs Board composition. It states that if the chairperson of the board is a regular non-executive director, at least 1/3rd of the board should comprise independent directors. However, if the chairperson is an executive director, or is a promoter, or is related to any promoter, at least **half (50%) of the board of directors** shall consist of independent directors.

Analysis: The Chairperson is an executive director and a promoter. Therefore, the 50% rule applies. For a board of 12 directors, the company must have at least 6 Independent Directors. Omega Ltd only has 4.

Conclusion: The composition strictly violates SEBI LODR Regulations. Omega Ltd must immediately appoint at least 2 more Independent Directors to reach the mandatory 50% threshold.

Case Study 5: LODR - Audit Committee Independence

FACTS OF THE CASE:

A listed company constituted its Audit Committee with 4 members. It consists of 1 Executive Director and 3 Non-Executive Directors. Out of the 3 Non-Executive Directors, 2 are Independent Directors. The Chairperson is one of the non-independent Non-Executive directors. Assess the validity under LODR.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 18 of SEBI (LODR) requires that an Audit Committee shall have a minimum of three directors as members. Two-thirds (2/3rd) of the members of the audit committee shall be independent directors. Furthermore, the Chairperson of the audit committee shall strictly be an **independent director**.

Analysis: The committee has 4 members. 2/3rd of 4 = 2.67 (rounded to 3). Therefore, the committee must have at least 3 Independent Directors. It only has 2. Secondly, the Chairperson is not an independent director.

Conclusion: The constitution of the Audit Committee violates Regulation 18 on two grounds: failing the 2/3rd independence threshold, and failing the requirement for an Independent Chairperson. The company will face SEBI penalties and stock exchange fines.

Case Study 6: LODR - Material Related Party Transactions

FACTS OF THE CASE:

Alpha Ltd (a listed entity) has an annual consolidated turnover of ₹8,000 Crores. It enters into a contract to supply raw materials to an associated enterprise for ₹900 Crores. The Audit Committee approved the transaction. Does this transaction require shareholder approval?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Regulation 23 of SEBI (LODR), a transaction with a related party is considered 'material' if the transaction exceeds **₹1,000 Crores** OR **10% of the annual consolidated turnover**, whichever is lower. All material related party transactions require prior approval of the shareholders through a resolution.

Analysis: 10% of Turnover = 10% of ₹8,000 Cr = ₹800 Crores. The threshold is the lower of ₹1,000 Cr or ₹800 Cr, which is ₹800 Crores. The contract value is ₹900 Crores, meaning it exceeds the materiality threshold.

Conclusion: Yes, shareholder approval is mandatory. Audit Committee approval alone is insufficient for material RPTs. Furthermore, the associated enterprise (being a related party) shall not vote to approve such resolutions.

Case Study 7: LODR - Market Rumors and Price Movement

FACTS OF THE CASE:

A news article claimed that Beta Ltd (a top 100 listed entity) is merging with its main rival. The company's stock price shot up by 15% immediately. The stock exchange demanded a clarification. The company replied that it 'does not comment on market speculation'. Is this reply compliant with LODR 2024 amendments?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 30(11) of LODR was amended in 2024 to impose stricter duties on top listed entities. The top 100 (and subsequently top 250) listed entities must verify market rumors reported in mainstream media and **confirm, deny, or clarify** the rumor upon observing a **material price movement**.

Conclusion: Beta Ltd's reply of 'no comment' is a violation of the amended LODR Regulations. Since there was a 15% material price movement triggered by mainstream media news, the company is under a strict statutory obligation to either confirm, deny, or provide factual clarification to the stock exchanges. Vague evasions are no longer permitted.

Case Study 8: ICDR - IPO Eligibility Criteria (Profitability)

FACTS OF THE CASE:

TechStart Ltd wants to launch an IPO. Its net tangible assets for the last 3 years were ₹5 Cr, ₹8 Cr, and ₹12 Cr. Its net worth is ₹15 Cr. Its operating profits for the last 3 years were: Year 1: ₹-2 Cr (Loss), Year 2: ₹18 Cr, Year 3: ₹30 Cr. Can the company launch an IPO through the standard fixed price route?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 6(1) of SEBI (ICDR) states an issuer can make an IPO if it meets specific profitability criteria: It must have an average operating profit of at least **₹15 Crores** during the preceding 3 years, with **operating profit in each of these 3 preceding years**.

Analysis: Average profit = (-2 + 18 + 30) / 3 = ₹15.33 Crores (Meets average criteria). However, the company suffered a loss in Year 1, failing the requirement of having an operating profit in *each* of the 3 years.

Conclusion: TechStart Ltd is ineligible to launch an IPO under the standard route. It must use the alternate 'Book Building Route' under Regulation 6(2), where it is mandatorily required to allot at least 75% of the net offer to Qualified Institutional Buyers (QIBs).

Case Study 9: ICDR - Minimum Promoter Contribution Shortfall (2024 Amendment)

FACTS OF THE CASE:

In an IPO, the promoters of Gamma Ltd hold 15% of the post-issue capital. The required minimum promoter contribution is 20%. To launch the IPO, an independent Private Equity firm (holding 8% post-issue capital) agrees to lock in 5% of its shares to cover the shortfall. Is this permitted under SEBI regulations?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: The SEBI (ICDR) Regulations, as amended in 2024, state that if the promoter’s holding falls short of the minimum 20% post-issue capital requirement, the shortfall can be met by **non-individual public shareholders holding at least 5%** of the post-offer equity share capital or any entity forming part of the promoter group.

Conclusion: Yes, it is permitted. Since the Private Equity firm is a non-individual public shareholder holding at least 5% (it holds 8%), its contribution of 5% can validly cover the promoter's shortfall. These contributed shares will be subjected to the same strict lock-in period applicable to the minimum promoter contribution.

Case Study 10: ICDR - Lock-in Period for Promoters

FACTS OF THE CASE:

The promoters of Delta Ltd held 35% of the post-issue capital after their IPO. They want to sell their entire stake 1 year after the date of allotment. Outline the lock-in restrictions they face.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under SEBI (ICDR) Regulations, promoters face dual lock-in periods:
1. The Minimum Promoter's Contribution (20% of post-issue capital) is locked in for **18**

months from the date of allotment (reduced from 3 years, assuming it's not project financing).
2. The promoter's holding in excess of 20% (here, 15%) is locked in for **6 months** from the date of allotment.

Conclusion: The promoters cannot sell their entire 35% stake after 1 year. While the excess 15% becomes free to trade after 6 months, the core 20% remains locked for 18 months. They must wait another 6 months to liquidate their minimum contribution.

Case Study 11: ICDR - Minimum Subscription Rule

FACTS OF THE CASE:

Epsilon Ltd launched an IPO to raise ₹100 Crores. The issue received bids worth ₹85 Crores from the public. The company wants to proceed with allotment for the ₹85 Crores. Can they legally do so?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 45 of SEBI (ICDR) mandates that the minimum subscription received in the issue shall not be less than **90%** of the offer through the offer document. If the company does not receive 90%, all application monies must be refunded.

Conclusion: Epsilon Ltd cannot proceed with the allotment. The bids amount to 85% of the offer size, which is below the mandatory 90% threshold. The IPO fails. The company must refund the entire ₹85 Crores to the applicants within 4 days of the issue closing, failing which interest at 15% p.a. is applicable.

Case Study 12: SAST - Mandatory Open Offer Trigger (Reg 3)

FACTS OF THE CASE:

Mr. Z holds 15% shares in Target Ltd (a listed company). He purchases another 12% stake in a bulk block deal. Is he required to make an Open Offer to the public shareholders under SEBI (SAST) Regulations?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 3(1) of SEBI (SAST) Regulations, 2011 states that an acquirer, who together with persons acting in concert (PAC), acquires shares or voting rights entitling them to exercise **25% or more** of the voting rights in a target company, shall make a public announcement of an open offer.

Analysis: Mr. Z's total holding becomes 15% + 12% = 27%. Since 27% exceeds the 25% statutory trigger threshold, the open offer mandate is activated.

Conclusion: Yes, Mr. Z must make a mandatory Open Offer to acquire at least an additional **26%** of the total shares of the target company from the public shareholders at a price determined under Regulation 8.

Case Study 13: SAST - Creeping Acquisition Limits

FACTS OF THE CASE:

Acquirer Co holds 35% shares in Target Ltd. In FY 2025-26, Acquirer Co purchases an additional 6% shares from the open market. The management claims no open offer is needed as they already breached the 25% initial trigger years ago. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 3(2) deals with 'Creeping Acquisitions'. It states that an acquirer who already holds between 25% and 75% of the voting rights in a target company cannot acquire more than **5% of the voting rights in a single financial year** without triggering a mandatory open offer.

Conclusion: The management's claim is incorrect. While they are past the 25% initial trigger, they are governed by the creeping acquisition limits. Acquiring 6% in a single financial year breaches the 5% safe harbor limit. Consequently, Acquirer Co must make a fresh public announcement for a mandatory Open Offer for 26% of the target's shares.

Case Study 14: SAST - Change in Control without Share Threshold

FACTS OF THE CASE:

Global Inc acquires zero shares in an Indian listed company, but through a complex shareholder agreement, it gains the absolute right to appoint the majority of the directors on the Indian company's board and dictate its management policies. Does this trigger the Takeover Code?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 4 of SEBI (SAST) Regulations specifically governs 'Change in Control'. Irrespective of the percentage of shares acquired (even if 0%), if an acquirer, directly or indirectly, acquires **control** over a target company, they must make a public announcement of an open offer.

Conclusion: Yes, the Takeover Code is triggered. The right to appoint the majority of directors and dictate policy constitutes 'control' under SEBI definitions. Global Inc must make an Open Offer to the minority shareholders to provide them an exit opportunity due to the change in management control.

Case Study 15: SAST - Inter-se Transfer Exemption (Reg 10)

FACTS OF THE CASE:

Promoter A and Promoter B belong to the same promoter group of a listed company for the past 5 years. Promoter A transfers 10% of his shares to Promoter B. Promoter B's total holding breaches the 25% threshold. Is Promoter B required to make an Open Offer?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 10 provides specific exemptions from the mandatory open offer requirements. Regulation 10(1)(a) explicitly exempts acquisitions pursuant to **inter-se transfer of shares amongst qualifying parties**, such as persons named as promoters in the shareholding pattern filed for not less than three years prior to the proposed acquisition.

Conclusion: No Open Offer is required. Since Promoter A and B have been recognized promoters for more than 3 years, the transfer between them is a valid inter-se transfer protected by the statutory exemption under Regulation 10. Promoter B only needs to make the necessary disclosures to the stock exchange regarding the transfer.

Case Study 16: PIT - Communication of UPSI (Reg 3)

FACTS OF THE CASE:

The CFO of a listed company shares the un-audited quarterly financial results (which show a 300% profit surge) with the company's statutory auditor and legal advisor a week before the board meeting. A shareholder complains that sharing this UPSI violates Insider Trading norms. Is the complaint valid?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 3 of SEBI (PIT) Regulations, 2015 prohibits any insider from communicating UPSI to any person. However, an explicit exception is provided: communication of UPSI is permitted if it is in furtherance of **legitimate purposes, performance of duties, or discharge of legal obligations**.

Conclusion: The complaint is invalid. Sharing draft financial results with statutory auditors and legal advisors is absolutely necessary for the discharge of legal and professional duties (audit and compliance). This falls squarely within the 'legitimate purposes' exception. The auditors/advisors become 'connected persons' and are bound by confidentiality, but the CFO's act of sharing the data is perfectly legal.

Case Study 17: PIT - Trade execution based on UPSI (Reg 4)

FACTS OF THE CASE:

Mr. K, a director of a pharma company, learns that a crucial drug failed its Phase 3 FDA trial. This information is highly confidential. Before the company makes a public announcement, Mr. K sells his entire holding in the company to avoid losses. Explain his liability under PIT Regulations.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 4 of the SEBI (PIT) Regulations strictly states that no insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of Unpublished Price Sensitive Information (UPSI).

Conclusion: Mr. K's action is the textbook definition of illegal Insider Trading. The FDA trial failure is material UPSI capable of crashing the stock price. By trading while in possession of this asymmetrical information to avoid a personal loss, Mr. K has violated Regulation 4. He will face severe SEBI penalties, including disgorgement of avoided losses, massive fines (up to ₹25 Crores or 3 times the profit made), and potential criminal prosecution.

Case Study 18: PIT - Trading Plans (Reg 5) - Cooling Off Period

FACTS OF THE CASE:

The CEO of a listed company formulates a Trading Plan to sell 10,000 shares to fund his daughter's education. The Compliance Officer approves and publicly discloses the plan on 1st January on the stock exchange. The CEO executes the sale on 15th March of the same year. Has he violated SEBI norms?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 5 allows insiders to establish a Trading Plan to execute trades legally. However, to prevent abuse, Regulation 5(2)(a) mandates a strict **cooling-off period**. It states that no trading can commence on behalf of the insider earlier than **six months** from the public disclosure of the plan.

Conclusion: Yes, the CEO has committed a severe violation. The plan was disclosed on 1st January, meaning he is legally barred from trading until 1st July (6 months later). Executing the trade on 15th March breaches the mandatory cooling-off period, rendering the protection of the Trading Plan void and subjecting him to insider trading penalties.

Case Study 19: PIT - Irrevocability of Trading Plans

FACTS OF THE CASE:

Following Illustration 18, assume the CEO waited the full 6 months. By 1st August, the company's stock price crashed significantly. The CEO no longer wants to sell his shares at a loss and decides to cancel the Trading Plan. Can he do so?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 5(4) explicitly dictates that a trading plan, once approved, shall be **irrevocable** and the insider shall **mandatorily have to implement the plan**, without being entitled to either deviate from it or execute any trade in the securities outside the scope of the trading plan.

Conclusion: The CEO cannot cancel the plan. The irrevocability clause ensures that insiders cannot use trading plans as optional 'call options' to execute trades only when market prices are favorable. The CEO is legally bound to sell the 10,000 shares on the scheduled dates, even if it results in a financial loss due to the crashed stock price.

Case Study 20: PIT - Structured Digital Database (SDD)

FACTS OF THE CASE:

During a SEBI investigation into an information leak, a listed company admits it shared UPSI regarding an upcoming merger with 15 different consultants, lawyers, and bankers over emails. However, the company maintained no central log of who received what information. What specific compliance has the company violated?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under SEBI (PIT) Regulations, the Board of Directors of every listed company shall ensure that a **Structured Digital Database (SDD)** is maintained containing the names of such persons or entities with whom UPSI is shared under the regulation, along with the Permanent Account Number (PAN) or any other identifier authorized by law.

Conclusion: The company is guilty of violating the SDD maintenance requirements. The SDD is a critical investigative tool for SEBI to establish the chain of information flow. By failing to maintain a time-stamped digital database of the 15 external consultants, the company has breached corporate governance and PIT compliance norms, attracting substantial monetary penalties.

Case Study 21: SAST - Escrow Account Requirements (Reg 17)

FACTS OF THE CASE:

An acquirer triggers a mandatory open offer. The total consideration payable under the open offer is calculated at ₹800 Crores. How much money must the acquirer deposit into the Escrow Account to satisfy SEBI regulations?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 17 of SEBI (SAST) requires the acquirer to create an escrow account as security for performance. The required deposit is:
- For the first ₹500 Crores: **25%** of the consideration.
- For the balance consideration exceeding ₹500 Crores: **10%** of the balance amount.

Computation:
Total Consideration = ₹800 Crores.
On first ₹500 Crores = 25% of ₹500 Cr = **₹125 Crores**.
On balance ₹300 Crores (800 - 500) = 10% of ₹300 Cr = **₹30 Crores**.
Total Escrow Deposit Required = 125 + 30 = **₹155 Crores**.

Case Study 22: SEBI's Power to issue Cease and Desist Orders

FACTS OF THE CASE:

SEBI receives preliminary intelligence that a group of brokers is aggressively manipulating the stock price of an illiquid company. SEBI wants to freeze their trading accounts immediately before the investigation concludes. Can SEBI do so, and under what power?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 11D and Section 11(4) of the SEBI Act empower the Board to pass **Cease and Desist** orders. If SEBI has reasonable grounds to believe that a person is engaged in an act which violates securities laws, it can pass an order pending investigation or inquiry, restraining that person from accessing the securities market and prohibiting them from buying, selling, or dealing in securities.

Conclusion: Yes, SEBI can take immediate preventive action. To protect market integrity, SEBI has the quasi-judicial power to issue ex-parte ad-interim orders (without hearing the brokers first) freezing their accounts to stop the ongoing manipulation, pending a full investigation.

Case Study 23: LODR - Prior Intimation of Board Meetings

FACTS OF THE CASE:

A listed entity wants to convene a Board meeting to approve a proposal for a buyback of securities. The company intimates the stock exchange 1 working day before the meeting. Is this timeline acceptable under LODR 2024 amendments?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Regulation 29 of SEBI (LODR), prior intimation to the stock exchange is mandatory for specific events. The 2024 amendments standardized the timeline: the listed entity must give prior intimation at least **two working days** in advance, excluding the date of the intimation and the date of the meeting, for proposals like buyback of securities, declaration of dividend, or fundraising.

Conclusion: The 1-working-day intimation is a violation of LODR. The company must provide clear two working days' notice to the stock exchange to allow the market sufficient time to absorb the potential price-sensitive event.

Case Study 24: ICDR - Pricing of Preferential Issue

FACTS OF THE CASE:

A listed company issues equity shares on a preferential basis to a specific investor. The promoters arbitrarily set the price at ₹50 per share, while the current market price is ₹90. A minority shareholder objects. Explain the ICDR pricing rules.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under SEBI (ICDR) Regulations, a preferential issue by a frequently traded listed company is subject to strict pricing guidelines to prevent dilution of minority shareholder value. The price cannot be arbitrarily set. It must be **not less than the higher of**:
1. The average of the weekly high and low of the VWAP of the related equity shares quoted on the recognized stock exchange during the **90 trading days** preceding the relevant date; OR
2. The average of the weekly high and low of the VWAP during the **10 trading days** preceding the relevant date.

Conclusion: The minority shareholder's objection is valid. The promoters cannot arbitrarily price the issue at a steep discount (₹50). The issue price must mathematically comply with the SEBI prescribed VWAP formula, ensuring it accurately reflects recent market valuations.

Case Study 25: SAST - Conditional Open Offer

FACTS OF THE CASE:

An acquirer makes a public announcement for an Open Offer to buy 26% of a target company's shares. However, the acquirer inserts a clause stating the offer is 'conditional upon a minimum level of acceptance of 20%'. If only 15% of shares are tendered, the acquirer wants to reject all of them. Is a conditional offer permitted?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 19 of the SEBI (SAST) Regulations allows an acquirer to make an open offer conditional upon a **minimum level of acceptance**.

Consequence of Failure: If the open offer is conditional, and the minimum level of acceptance specified by the acquirer is not reached, the acquirer is **not bound to accept any shares** tendered by the public shareholders. The offer simply fails. Furthermore, the acquirer must return all shares tendered and the escrow account mechanisms resolve accordingly.

Conclusion: Yes, the conditional clause is legally permitted. Since only 15% was tendered against the condition of 20%, the acquirer can legally reject the tendered shares and walk away from the open offer process.

Summary & Key Takeaways for Examination Day

1. **SEBI Act Powers:** Sweeping quasi-judicial and executive powers. Search & seizure requires prior Magistrate approval. Appeals go to SAT (45 days) and then Supreme Court (60 days, only on questions of law). Civil courts have zero jurisdiction.
2. **LODR Governance Limits:** Board needs 50% non-executive directors. If chairperson is promoter/executive, 50% must be Independent. Audit Committee requires 2/3rd Independent Directors and an ID Chairperson. RPT materiality is ₹1000 Cr or 10% turnover (lower).
3. **LODR Market Rumors (2024 Update):** Top listed entities can no longer say "no comment." They must explicitly confirm/deny rumors causing material price movement.
4. **ICDR IPO Rules:** Standard route demands 3 years of operating profits (₹15 Cr avg) and tangible assets (₹3 Cr). Failing this forces the Book Building route (75% compulsory allocation to QIBs).
5. **ICDR Lock-ins (2024 Update):** Promoters minimum 20% contribution locked for 18 months. Excess locked for 6 months. Minimum subscription is strictly 90% of the offer.
6. **SAST (Takeovers):** Initial trigger is 25% voting rights -> mandates 26% Open Offer. Creeping acquisition allows max 5% per FY for those already holding 25% to 75%. Escrow is 25% for first ₹500 Cr, 10% for balance.
7. **PIT (Insider Trading):** Trading while possessing UPSI is strictly banned. Trading Plans require a 6-month cooling-off period, 12-month execution, and are absolutely irrevocable. Listed companies must maintain a time-stamped Structured Digital Database (SDD).

--- End of Module III (Securities Laws & SEBI) Detailed Guide ---

ICMAI PAPER 13

CORPORATE AND ECONOMIC LAWS

PART 6: MODULE IV (FEMA, 1999)

Foreign Exchange Management Act, 1999
Residential Status, Current & Capital Accounts, FDI, ODI, ECB & Compounding
(Comprehensive Theory + 25 Solved Exam Cases)

Target Examination: December 2026
Syllabus Framework: ICMAI 2022

cmaknowledge.in

Section A: Framework & Residential Status under FEMA

1. Preamble, Scheme & FERA vs FEMA

Preamble & Objective: An Act to consolidate and amend the law relating to foreign exchange with the objective of *facilitating external trade and payments* and for promoting the *orderly development and maintenance of foreign exchange market in India*.

Civil Nature of FEMA vs Criminal FERA:

- FERA, 1973 was regulatory and punitive with a presumption of mens rea; violation was a criminal offence with arrest and imprisonment.
- FEMA, 1999 is a civil legislation focused on exchange management. Contravention attracts monetary penalty; imprisonment arises only on failure to pay the penalty (civil imprisonment).

2. Definition of "Person Resident in India" (PRII) - Section 2(v)

Residential status under FEMA is the cornerstone for determining whether a person can undertake transactions. It is fundamentally different from the residential status test under the Income Tax Act, 1961.

Component	Statutory Definition & Tests
Basic Test (Physical Presence)	A person residing in India for **more than 182 days** during the course of the **preceding financial year**.
Exceptions to Basic Test (Departure)	Even if a person stayed >182 days in the preceding FY, he **DOES NOT** include a person who has gone out of India or who stays outside India: (a) for or on taking up **employment** outside India; or (b) for carrying on outside India a **business or vocation** outside India; or (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an **uncertain period**. *Effect:* Such a person becomes a **Person Resident Outside India (PROI)** from the **date of his departure**.
Inclusion Test (Arrival in India)	Even if a person did not stay >182 days in the preceding FY, he **INCLUDES** a person who has come to or stays in India, **OTHERWISE than**: (a) for or on taking up employment in India; (b) for carrying on in India a business or vocation in India; or (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

	Effect: If a person arrives in India for employment, business, or with an intention to stay for an uncertain period, he becomes a **PRII immediately upon arrival**.
Bodies Corporate & Branches	(i) Any person or body corporate incorporated or registered in India. (ii) An office, branch or agency in India owned or controlled by a person resident outside India. (iii) An office, branch or agency outside India owned or controlled by a person resident in India.

Key Difference: FEMA vs Income Tax Act:

- **Income Tax Act (Sec 6):** Considers physical stay in India during the *current* financial year (182 days or 60 days + 365 days). Intent is completely irrelevant.
- **FEMA (Sec 2(v)):** Considers stay in the *preceding* financial year (>182 days) combined with the *purpose and intent* of stay during the current year.

Section B: Current and Capital Account Transactions

3. Current Account Transactions (Section 2(j) & Section 5)

Definition: A transaction other than a capital account transaction, and without prejudice to the generality of the foregoing, includes:

- Payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business;
- Payments due as interest on loans and as net income from investments;
- Payments by way of remittances for living expenses of parents, spouse, and children residing abroad; and
- Expenses in connection with foreign travel, education, and medical care of parents, spouse, and children.

> **General Rule of Section 5:** Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a **current account transaction**. Freedom is the rule; restrictions are exceptions.
>
> **Regulated by:** *Foreign Exchange Management (Current Account Transactions) Rules, 2000* containing three schedules.

Schedules under Current Account Transaction Rules:

Schedule	Category of Transaction	Approval Required / Restrictions
Schedule I	**Prohibited Transactions**	Drawal of foreign exchange is strictly **PROHIBITED** for: - Remittance out of lottery winnings. - Remittance of income from racing/ riding or any other hobby. - Remittance for purchase of lottery tickets, football pools, sweepstakes. - Payment of commission on exports made towards equity investment in JV/WOS. - Remittance of dividend by any company where dividend balancing requirement applies. - Payment of commission on exports under Rupee State Credit Route.

		- Payment for callback services of telephones. - Remittance of interest income on funds held in Non-Resident Special Rupee (NRSR) Account.
Schedule II	**Approval of Central Government**	Prior approval of specified Central Government Ministry is mandatory (e.g., Ministry of Information & Broadcasting for hiring transponders, Ministry of Surface Transport for payment of charter hire of vessels, Ministry of Human Resource Development for remitting prizes/sponsorship of sports exceeding $100,000).
Schedule III	**Approval of Reserve Bank of India (RBI)**	Transactions exceeding prescribed limits require prior approval of RBI. However, for individuals, all facilities for release of foreign exchange are subsumed under the **Liberalised Remittance Scheme (LRS)**.

4. Liberalised Remittance Scheme (LRS) for Resident Individuals

- **Permissible Limit:** Resident individuals are freely allowed to remit up to **USD 250,000** per financial year (April – March) for any permitted current or capital account transaction or a combination of both.
- **Available to:** Only **individuals** (including minors). LRS is NOT available to corporates, partnership firms, HUF, or trusts.
- **Purposes covered:** Private visits abroad, gift/donation, going abroad for employment, emigration, maintenance of close relatives abroad, travel for business/conference, medical treatment, and studies abroad.
- **Remittances beyond $250,000:** For emigration, medical treatment, and overseas studies, remittance exceeding $250,000 is permitted without RBI approval if supported by an estimate from the foreign hospital/university.

5. Capital Account Transactions (Section 2(e) & Section 6)

Definition: A transaction which **alters the assets or liabilities, including contingent liabilities, outside India** of persons resident in India OR **assets or liabilities in India** of persons resident outside India. It includes transactions referred to in Section 6(3).

> **General Rule of Section 6:** Unlike current account transactions where freedom is the rule, for capital account transactions, **prohibition is the rule** unless permitted by RBI/Central Government regulations.

Categorization of Capital Account Transactions:

- **Permissible for Person Resident in India (PRII):** Investment in foreign securities, foreign currency loans raised in India and abroad, transfer of immovable property outside India, guarantee in respect of any debt obligation outside India.
- **Permissible for Person Resident Outside India (PROI):** Investment in Indian securities, acquisition or transfer of immovable property in India, raising foreign currency loans, deposits between PRII and PROI.

Section C: Foreign Direct Investment (FDI), ODI & ECB

6. Foreign Direct Investment (FDI) - NDI Rules, 2019

FDI is an investment through capital instruments by a person resident outside India in an unlisted Indian company, or in 10% or more of the post-issue paid-up equity capital on a fully diluted basis of a listed Indian company.

Entry Routes:

1. **Automatic Route:** No prior approval of the Government or RBI is required. Intimation through Form FC-GPR within 30 days of allotment of shares.
2. **Government (Approval) Route:** Prior approval of the Government (concerned administrative ministry/department through the Foreign Investment Facilitation Portal - FIFP) is mandatory.

Prohibited Sectors for Foreign Investment:

FDI is completely **PROHIBITED** in the following sectors:

- Lottery business including Government/private lottery, online lotteries, etc.
- Gambling and betting including casinos, etc.
- Chit funds (except with prior approval of State Govt/RBI for existing chits).
- Nidhi companies.
- Trading in Transferable Development Rights (TDRs).
- Real Estate Business or Construction of Farm Houses (*Note: Construction development of townships, roads, bridges, hotels, hospitals is permitted*).
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or tobacco substitutes.
- Activities/sectors not open to private sector investment (e.g., Atomic Energy and Railway Operations other than permitted infrastructure).

Land Border Restriction (Press Note 3 / Rule 6):

Any entity of a country which shares a **land border with India** (or where the beneficial owner of an investment into India is situated in or is a citizen of any such country) can invest **ONLY under the Government Route**, regardless of the sector.

7. Overseas Direct Investment (ODI) / Overseas Investment (OI Rules, 2022)

Overseas Investment by Indian entities is governed by the *Foreign Exchange Management (Overseas Investment) Rules, 2022*.

- **Overseas Direct Investment (ODI):** Investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in 10% or more of the paid-up equity capital of a listed foreign entity, or investment with control.
- **Overseas Portfolio Investment (OPI):** Investment in foreign securities other than ODI (e.g., less than 10% of listed foreign equity without control).
- **Financial Commitment (FC) Limit for Indian Entity:** The total financial commitment made by an Indian entity in all foreign entities taken together shall not exceed **400% of its Net Worth** as per the last audited balance sheet.
- **Components of Financial Commitment:** Equity + 100% of loans granted + 100% of guarantees issued + 50% of performance guarantees + 100% of charge created on assets.
- **Round-Tripping / Layering Rule:** No Indian entity shall make financial commitment in a foreign entity that has invested or invests in India through the structure of more than **two layers of subsidiaries**.

8. External Commercial Borrowings (ECB) Framework

Parameter	ECB Regulatory Mandate
Eligible Borrowers	All entities eligible to receive FDI, Port Trusts, Units in SEZ, SIDBI, and EXIM Bank.
Recognized Lenders	Must be a resident of an FATF or IOSCO compliant country. Multilateral and regional financial institutions, foreign equity holders (holding min 25% direct equity).
Minimum Average Maturity Period (MAMP)	- Standard MAMP: **3 years**. - Manufacturing sector companies raising ECB up to USD 50 million: **1 year**. - ECB raised from foreign equity holder for working capital/general corporate purposes: **5 years**. - ECB raised for working capital/general corporate purposes or repayment of rupee loans: **7 years or 10 years**.
All-in-Cost Ceiling	Benchmark rate + **500 bps (5.00%)** per annum for existing ECBs / 550 bps for new foreign currency borrowings (or as notified by RBI).
End-Use Restrictions (Negative List)	ECB proceeds CANNOT be used for: - Real estate activities.

	- Investment in capital market or equity. - Working capital purposes (except from foreign equity holder or under 7/10-year MAMP). - General corporate purposes (except under specified conditions). - On-lending to entities for the above activities.
Individual Limit (Automatic Route)	Up to **USD 750 million** (or equivalent) per financial year under the automatic route.

Section D: Immovable Property, Enforcement & Compounding

9. Acquisition and Transfer of Immovable Property (NDI Rules, 2019)

Category of Person	Acquisition Rules in India
Non-Resident Indian (NRI) / Overseas Citizen of India (OCI)	- May acquire any immovable property in India **OTHER THAN agricultural land, farm house, or plantation property**. - May acquire any immovable property (including agricultural land) by way of **inheritance** from a person who was resident in India. - Payment must be received through banking channels by way of inward remittance or debit to NRE/FCNR(B)/NRO account.
Foreign National of Non-Indian Origin (residing outside India)	Cannot acquire or transfer immovable property in India without prior approval of the Reserve Bank of India, except by way of lease not exceeding **5 years**.
Foreign National Resident in India	A person resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong, or Democratic People's Republic of Korea cannot acquire or transfer immovable property in India without prior permission of the RBI.

10. Export of Goods and Services (Section 7)

- **Declaration:** Every exporter of goods must furnish a declaration in the prescribed form (EDF/SOFTEX) affirming the true export value of goods/services.
- **Time Period for Realization (Reg 9):** The amount representing the full export value of goods or software or services exported shall be realized and repatriated to India within **9 months** from the date of export.
- **Export to Warehouses outside India:** Period of realization is **15 months**.
- **Extension:** Authorized Dealer (AD Category-I) banks can grant extension of time up to 6 months at a time subject to prescribed conditions.

11. Contravention, Penalties & Adjudication (Sections 13 to 15)

Penalties u/s 13(1): If any person contravenes any provision of FEMA, rule, regulation, direction or order:

- Where amount is quantifiable: Penalty up to **three times (3x) the sum involved** in such contravention.
- Where amount is not quantifiable: Penalty up to **₹2 Lakhs**.
- Continuing Contravention: Further penalty up to **₹5,000 for every day** after the first day during which the contravention continues.

Enforcement Directorate (ED) & Confiscation:

Adjudicating Authorities are appointed by the Central Government. In addition to monetary penalties, any currency, security, or any other money or property in respect of which the contravention has taken place may be **confiscated to the Central Government** (Section 13(2)).

12. Compounding of Offences (Section 15)

Concept: Compounding is a voluntary process of admitting a contravention, pleading guilty, and seeking settlement by paying a compounding fee rather than facing prosecution.

Compounding Authorities:

- Officers of the **Reserve Bank of India (RBI)** for contraventions of regulations (FDI, ODI, ECB, Current/Capital account).
- Officers of the **Directorate of Enforcement (ED)** for contraventions of hawala/Section 3(a) nature.

Key Timelines & Rules:

1. Application can be made at any time within 3 years of contravention.
2. Compounding order must be passed within **180 days** from the date of receipt of the application.
3. Compounding fee must be paid within **15 days** from the date of the order.
4. **Restriction on Subsequent Compounding:** No contravention can be compounded if a similar contravention was committed by the person within a period of **3 years** from the date on which the first contravention was compounded. Any subsequent contravention after 3 years is treated as a first contravention.
5. Offences where money laundering, terror financing, or serious fraud is involved CANNOT be compounded.

Case Study 1: Residential Status of Individual Leaving for Employment (Sec 2(v))

FACTS OF THE CASE:

Mr. Rohit, an Indian citizen, resided in India for 250 days during FY 2024-25. On 10th June 2025, he left India to take up permanent employment in Germany. During the remainder of FY 2025-26, he did not return to India. Determine his residential status under FEMA for FY 2025-26.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 2(v) of the Foreign Exchange Management Act, 1999, a person is a 'Person Resident in India' (PRII) if he has resided in India for more than 182 days during the preceding financial year.
However, Clause (A) to Section 2(v)(i) creates an explicit exception: a person who has stayed >182 days in the preceding FY **shall NOT be treated as PRII** if he has gone out of India or stays outside India **for or on taking up employment outside India**.

Analysis: Mr. Rohit stayed for 250 days in FY 2024-25 (preceding FY), satisfying the basic physical presence test. However, on 10th June 2025, he left India for employment abroad. Therefore, the statutory exception applies immediately from the date of his departure.

Conclusion: Mr. Rohit ceased to be a PRII and became a **Person Resident Outside India (PROI)** with effect from **10th June 2025**. His status for the period from 1st April 2025 to 9th June 2025 was PRII, and from 10th June 2025 onwards, he is a PROI.

Case Study 2: Residential Status of Foreign National Coming to India

FACTS OF THE CASE:

Mr. John, an American citizen, had never visited India prior to FY 2025-26. On 15th July 2025, he arrived in Bengaluru having taken up employment with an Indian IT firm on a 3-year contract. Examine his residential status under FEMA for FY 2025-26 and under the Income Tax Act, 1961.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Under FEMA, 1999 (Sec 2(v)): Mr. John did not stay in India for >182 days in the preceding FY (2024-25: 0 days). However, Clause (B) of Section 2(v)(i) states that PRII includes a person who has come to or stays in India *otherwise than* for employment/business/uncertain stay. In other words, a person who comes to India **for or on taking up employment in India** is treated as a **Person Resident in India (PRII) from the date of arrival**.

Under Income Tax Act, 1961 (Sec 6): Residential status is determined strictly by physical stay in the current FY. Mr. John stayed in India from 15-July-2025 to 31-March-2026 = 260 days. Since stay is ≥182 days in the current year, he is a **Resident** for tax purposes.

Conclusion: Under FEMA, Mr. John is a **PRII from 15th July 2025**. Under the Income Tax Act, he is a **Resident** for AY 2026-27. (Notice how both statutes reach residency via entirely different statutory pathways).

Case Study 3: Branch Office Residential Status under FEMA

FACTS OF THE CASE:

Global Inc, a company incorporated in the USA, established a branch office in Mumbai with RBI approval to carry on trading activities in India. Examine the residential status of the Mumbai branch under FEMA.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 2(v)(iii) explicitly provides that 'person resident in India' includes **an office, branch or agency in India owned or controlled by a person resident outside India**.

Analysis & Conclusion: Although Global Inc is a foreign company (PROI), its Mumbai branch is situated in India. By virtue of the statutory deeming fiction in Section 2(v)(iii), the **Mumbai branch of Global Inc is a Person Resident in India (PRII)**. All foreign exchange transactions between the Mumbai branch and its US Head Office are treated as cross-border transactions between a PRII and a PROI.

Case Study 4: Prohibited Current Account Transactions (Schedule I)

FACTS OF THE CASE:

Mr. Anil won $50,000 in a lottery in Las Vegas while on a holiday. He paid US taxes and deposited the balance in his US bank account. He now wishes to remit this $50,000 back to his sister in Mumbai to buy jewelry. Simultaneously, his friend Mr. Sunil wants to buy lottery tickets online from a UK website for £5,000. Advise both on FEMA compliance.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Remittance of Lottery Winnings into India (Mr. Anil): Bringing foreign exchange into India (inward remittance) is encouraged. Mr. Anil is freely permitted to repatriate his lottery winnings into India through normal banking channels.

Purchase of Lottery Tickets Abroad (Mr. Sunil): Foreign Exchange Management (Current Account Transactions) Rules, 2000, **Schedule I** strictly prohibits the drawal of foreign exchange for *'remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.'*

Conclusion: Mr. Anil can legally bring the money to India. However, Mr. Sunil is **absolutely prohibited** from remitting £5,000 or using an Indian credit/debit card to purchase lottery tickets online. Doing so attracts a penalty up to 3x the sum involved u/s 13.

Case Study 5: Remittance for Cultural Tours (Schedule II)

FACTS OF THE CASE:

A cultural dance troupe from Chennai plans to visit Australia for a 15-day cultural performance tour. The troupe approaches an Authorized Dealer bank to draw foreign exchange of USD 80,000 to cover travel and accommodation expenses. State whether any Government approval is required.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Schedule II of the Current Account Transactions Rules, 2000, remittances for **cultural tours** require prior approval of the **Ministry of Human Resource Development (Department of Education and Culture)**, Government of India.

Conclusion: The Authorized Dealer cannot release the USD 80,000 on its own authority. The troupe must first obtain formal written approval from the Ministry of Human Resource Development. Only upon producing the ministry's sanction order can the AD bank release the foreign exchange.

Case Study 6: Liberalised Remittance Scheme (LRS) - Purchase of Shares Abroad

FACTS OF THE CASE:

Mr. Mahesh, a resident individual, remitted USD 180,000 under LRS in May 2025 to buy shares of Apple Inc in the US. In January 2026, he wants to remit another USD 100,000 to gift his son studying in New York. Can he make this second remittance under LRS?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under the Liberalised Remittance Scheme (LRS), an Authorized Dealer may release foreign exchange up to **USD 250,000 per financial year** (April – March) to a resident individual for any permitted current or capital account transaction or a combination of both.

Analysis:
- Remittance 1 (Capital Account - Shares): USD 180,000.
- Proposed Remittance 2 (Current Account - Gift): USD 100,000.
- Total proposed remittance in FY 2025-26 = 180,000 + 100,000 = **USD 280,000**.

The aggregate exceeds the annual statutory ceiling of USD 250,000 by USD 30,000.

Conclusion: Mr. Mahesh cannot remit the full USD 100,000 under the automatic LRS route. He can remit only the remaining unexhausted balance of **USD 70,000** (250,000 - 180,000). To remit beyond USD 250,000 for a gift, prior permission of the Reserve Bank of India is mandatory.

Case Study 7: LRS for Medical Expenses Exceeding USD 250,000

FACTS OF THE CASE:

Mr. Suresh needs urgent heart surgery in the USA. The US hospital provides an estimate of USD 380,000. He approaches his bank to remit this amount under LRS. The bank manager insists that since it exceeds USD 250,000, Suresh must obtain prior approval from the RBI. Is the manager right?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Schedule III (Facilities for individuals) of the Current Account Transactions Rules read with the LRS framework, for medical treatment abroad, an individual may draw foreign exchange up to USD 250,000.
However, the **fourth proviso** explicitly states that an individual may remit an amount **exceeding USD 250,000** if the remittance is required for medical treatment, without any RBI

approval, provided the drawal is **based on an estimate from a doctor in India or a hospital/doctor abroad**.

Conclusion: The bank manager is incorrect. Since Mr. Suresh has produced a formal estimate of USD 380,000 directly from the US hospital, the Authorized Dealer bank has full statutory authority to release the entire USD 380,000 without requiring prior approval from the RBI.

Case Study 8: FDI in Prohibited Sectors (Chit Funds / Real Estate)

FACTS OF THE CASE:

Foreign Investor 'X' wishes to invest USD 10 Million to acquire a 40% equity stake in an Indian company engaged in the business of constructing farm houses and trading in Transferable Development Rights (TDRs). Examine whether this foreign direct investment is permissible.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Rule 15 read with Schedule I of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, FDI is completely **prohibited** in certain sectors regardless of the entry route. The prohibited list explicitly includes:
1. Trading in Transferable Development Rights (TDRs); and
2. Real Estate Business or Construction of Farm Houses.

Conclusion: The proposed FDI of USD 10 Million is **strictly illegal and prohibited** under FEMA. The company cannot accept foreign investment through either the automatic route or the government approval route for these activities. Accepting this investment will constitute a severe contravention under Section 13.

Case Study 9: FDI Land Border Restrictions (Press Note 3)

FACTS OF THE CASE:

Dragon Holdings Ltd, a company incorporated in Hong Kong whose 100% beneficial ownership is held by Chinese nationals, seeks to invest ₹50 Crores in an Indian software manufacturing company under the 100% automatic route. Can the investment proceed under the automatic route?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Rule 6(a) of the NDI Rules, 2019 (codifying Press Note 3 of 2020), an entity of a country which shares a land border with India, or where the **beneficial owner** of an investment into India is situated in or is a citizen of any such country, can invest **ONLY under the Government Route**.

Analysis: China shares a land border with India. Although Dragon Holdings is incorporated in Hong Kong, its ultimate beneficial owners are citizens of China. Therefore, the restriction applies to the beneficial ownership.

Conclusion: The investment **CANNOT** proceed under the automatic route. Dragon Holdings must make a formal application on the Foreign Investment Facilitation Portal (FIFP) and obtain mandatory prior approval from the Government of India (Ministry of Commerce / MHA security clearance) before remitting any funds.

Case Study 10: Overseas Direct Investment (ODI) - Financial Commitment Limit

FACTS OF THE CASE:

Apex Ltd, an Indian company, has a Net Worth of ₹200 Crores as per its last audited balance sheet. It proposes to make an Overseas Direct Investment (ODI) by subscribing to 100% equity in a US subsidiary for ₹500 Crores, and providing a corporate guarantee of ₹400 Crores. Total proposed financial commitment is ₹900 Crores. Is this within the automatic route?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under the Foreign Exchange Management (Overseas Investment) Rules, 2022, the total Financial Commitment (FC) made by an Indian entity in all foreign entities taken together shall not exceed **400% of its Net Worth** as per the last audited balance sheet.

Computation:
- Net Worth = ₹200 Crores.
- Maximum permissible Financial Commitment under automatic route = 400% of ₹200 Cr = **₹800 Crores**.
- Total proposed commitment = ₹500 Cr (Equity) + ₹400 Cr (100% of guarantee) = **₹900 Crores**.

Conclusion: The proposed financial commitment of ₹900 Crores exceeds the 400% ceiling (₹800 Cr) by ₹100 Crores. Therefore, Apex Ltd cannot execute the transaction under the automatic route. It must seek prior approval from the **Reserve Bank of India** through its Authorized Dealer bank for the excess commitment.

Case Study 11: ODI Round-Tripping (Layering Restriction)

FACTS OF THE CASE:

Indian Co 'Ind' invests in 100% equity of a Singapore entity 'SG-1'. SG-1 sets up a wholly-owned subsidiary 'SG-2' in Singapore. SG-2 sets up 'SG-3' in Dubai. SG-3 now proposes to acquire 60% equity in an Indian manufacturing company. Evaluate this structure under the 2022 Overseas Investment Rules.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Rule 19(3) of the Foreign Exchange Management (Overseas Investment) Rules, 2022 regulates round-tripping. It provides that no Indian entity shall make financial commitment in a foreign entity that has invested or invests into India through the structure of **more than two layers of subsidiaries**.

Analysis:
- Layer 1: SG-1 (Singapore).
- Layer 2: SG-2 (Singapore).
- Layer 3: SG-3 (Dubai).

SG-3, which represents the third layer of subsidiary, is investing back into an Indian company.

Conclusion: The proposed investment structure violates the round-tripping restrictions under Rule 19(3) because it involves three layers of offshore subsidiaries before re-entering India. Indian Co 'Ind' cannot maintain financial commitment in this structure unless it collapses one of the intermediate offshore holding layers to stay within the two-layer limit.

Case Study 12: External Commercial Borrowings (ECB) - Minimum Maturity Period

FACTS OF THE CASE:

Nova Ltd, an Indian manufacturing company, enters into a loan agreement to borrow USD 20 Million as an ECB from a recognized lender in Japan. The agreement specifies an Average Maturity Period of 2 years. Can Nova Ltd raise this loan under the Automatic Route?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under the Master Direction on External Commercial Borrowings issued by RBI, the standard Minimum Average Maturity Period (MAMP) for an ECB is **3 years**. However, a specific relaxation exists: for **manufacturing sector companies**, ECBs up to **USD 50 million** or its equivalent per financial year can be raised with a MAMP of **1 year**.

Analysis: Nova Ltd is a manufacturing company. The loan amount is USD 20 Million (which is ≤ USD 50 Million). The proposed maturity period is 2 years (which is ≥ 1 year).

Conclusion: Yes, Nova Ltd can legally raise the USD 20 Million ECB under the Automatic Route. It satisfies the relaxed 1-year MAMP criterion applicable to manufacturing entities.

Case Study 13: ECB - Negative End-Use (Real Estate Activities)

FACTS OF THE CASE:

Skyline Developers Ltd raises an ECB of USD 100 Million under the automatic route. It proposes to utilize USD 60 Million for the construction of an IT SEZ park and the remaining USD 40 Million for purchasing vacant land in Mumbai for speculative price appreciation. Evaluate the end-use compliance.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: The ECB framework contains a strict **Negative List** of end-uses. ECB proceeds cannot be utilized for 'Real estate activities' or purchase of land.
Clarification: 'Real estate activity' does not include the development of integrated townships, construction of commercial IT parks, SEZs, roads, or bridges.

Analysis:
1. Utilizing USD 60 Million for constructing an IT SEZ park is a permitted infrastructure/commercial development activity.
2. Utilizing USD 40 Million for purchasing vacant land for speculative appreciation is explicitly classified as a prohibited 'real estate activity'.

Conclusion: The utilization of USD 40 Million for land purchase violates the ECB end-use restrictions. Skyline Developers Ltd must reallocate these funds to eligible capital expenditure or face severe penal action and compulsory loan recall under FEMA.

Case Study 14: Acquisition of Agricultural Land by Non-Resident Indian (NRI)

FACTS OF THE CASE:

Mr. Vikram, an NRI living in Canada, wants to purchase 10 acres of agricultural land in Punjab from a resident Indian farmer to set up an organic farming venture. Can he purchase this agricultural land under FEMA?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Rule 3 read with Rule 4 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, a Non-Resident Indian (NRI) or an Overseas Citizen of India (OCI) can acquire by way of purchase any immovable property in India **OTHER THAN agricultural land, farm house, or plantation property**.

Exception: An NRI can acquire agricultural land ONLY by way of **inheritance** from a person who was resident in India, but never by way of purchase.

Conclusion: Mr. Vikram is **strictly prohibited** from purchasing the agricultural land in Punjab. Even though he is an Indian citizen (NRI), FEMA bars the purchase of agricultural land by non-residents. The transaction cannot be registered.

Case Study 15: Foreign National Acquiring Residential Flat in India

FACTS OF THE CASE:

Mr. Pierre, a French citizen and tourist who visits India for 20 days every year, wants to buy a luxury residential apartment in Goa for his holiday stays. Can he buy the apartment?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under the NDI Rules, 2019, a foreign national of non-Indian origin who resides outside India is **prohibited from acquiring any immovable property in India** without prior approval of the Reserve Bank of India.

Exception: He can acquire immovable property only by way of a lease not exceeding **5 years** without RBI approval.

Conclusion: Mr. Pierre cannot purchase the apartment in Goa. Being a citizen of France residing outside India, he does not meet the PRII test, nor is he an NRI/OCI. He can only take the property on a lease for a period up to 5 years.

Case Study 16: Export Realization Time Period (Sec 7)

FACTS OF THE CASE:

Export Co shipped garments worth USD 500,000 to a buyer in France on 1st April 2025. By 31st December 2025, the buyer had paid only USD 200,000. What is the statutory time limit for realizing the remaining USD 300,000? Can the bank extend the time?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, the full value of exported goods/software/services must be realized and repatriated to India within **9 months** from the date of export.

Analysis: Export date: 1st April 2025. The 9-month realization deadline expires on **31st December 2025**. Since USD 300,000 remains unrealized after 31st December 2025, a contravention of Section 7 has occurred.

Extension of Time: Authorized Dealer Category-I banks have the delegated authority to grant an **extension of time up to 6 months** at a time, provided the exporter shows reasonable cause (e.g., buyer financial distress) and the outstanding amount does not exceed prescribed thresholds.

Conclusion: Export Co must immediately file an application with its AD bank seeking an extension of time before the expiry of the 9 months to avoid being classified as a defaulter by the RBI.

Case Study 17: Export to Overseas Warehouse Realization Timeline

FACTS OF THE CASE:

A tea manufacturing company in Assam exported bulk tea to its approved warehouse in London on 1st January 2025. The company realized the export proceeds on 15th February 2026. Did the company violate FEMA realization timelines?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Regulation 9(1)(a) provides an extended realization window for specific export setups: where the goods are exported to a **warehouse established outside India with the permission of the RBI**, the period of realization is **15 months** from the date of export (as opposed to the standard 9 months).

Analysis: Export date: 1st January 2025. The 15-month deadline expires on **31st March 2026**. The export proceeds were realized on 15th February 2026, which is within 13.5 months.

Conclusion: The company did NOT violate FEMA. The realization on 15th February 2026 is well within the special 15-month statutory timeline permitted for warehouse exports.

Case Study 18: Penalty under Section 13(1) - Quantifiable Contravention

FACTS OF THE CASE:

Starline Ltd illegally remitted USD 1 Million (equivalent to ₹8.5 Crores) to a tax haven for a prohibited capital account transaction. The Adjudicating Officer finds the company guilty. What is the maximum monetary penalty that can be levied u/s 13?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 13(1) of FEMA, 1999, if any person contravenes any provision of the Act, rule, regulation, or order, and the amount involved in the contravention is **quantifiable**, the penalty shall be up to **three times (3x) the sum involved** in such contravention.

Computation:
- Sum involved = ₹8.5 Crores.
- Maximum Penalty = 3 x ₹8.5 Crores = **₹25.5 Crores**.

Additional Power: Under Section 13(2), the Adjudicating Authority may also order the **confiscation** of any currency, security, or property in respect of which the contravention took place.

Case Study 19: Penalty under Section 13(1) - Non-Quantifiable & Continuing Breach

FACTS OF THE CASE:

A foreign subsidiary operating in India failed to file its mandatory annual performance report (APR) for 200 days after the deadline. The default is not quantifiable in monetary terms. Calculate the maximum penalty that can be imposed.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 13(1) states that where the amount of contravention is **not quantifiable**, the penalty may extend up to **₹2 Lakhs**.
Furthermore, where the contravention is a **continuing one**, a further penalty may be imposed which may extend up to **₹5,000 for every day** after the first day during which the contravention continues.

Computation:
- Base Non-Quantifiable Penalty = ₹2,00,000.
- Continuing Penalty (for 199 days) = 199 days x ₹5,000 = ₹9,95,000.
Total Maximum Penalty = ₹2,00,000 + ₹9,95,000 = **₹11,95,000**.

Case Study 20: Civil Imprisonment under FEMA (Sec 14)

FACTS OF THE CASE:

Mr. B was penalized ₹10 Lakhs by the Adjudicating Authority for an unauthorized foreign exchange transaction. Mr. B refused to pay the penalty. Can the Adjudicating Authority issue an arrest warrant and send him to prison?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 14 deals with enforcement of orders of the Adjudicating Authority. Under FEMA, contravention itself does not lead to imprisonment. However, if any person **fails to pay the full penalty** within 90 days of the demand notice, he shall be liable to **civil imprisonment**.

Duration of Civil Imprisonment (Sec 14(1)):
- If the default exceeds ₹1 Crore: Term up to **3 years**.
- In any other case: Term up to **6 months**.

Conclusion: Yes, the Adjudicating Authority can issue a warrant for Mr. B's arrest and detention in civil prison for a term up to **6 months** (since penalty is ₹10 Lakhs ≤ ₹1 Crore) for wilful default in paying the adjudicated penalty.

Case Study 21: Compounding of Contravention - Timeline for Order (Sec 15)

FACTS OF THE CASE:

Company Z filed an application for compounding an FDI reporting delay with the Reserve Bank of India on 1st January. The RBI passed the compounding order on 15th August. The company claims the order is invalid as it was passed after the expiry of statutory limits. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 15 of FEMA read with Rule 4 of the Foreign Exchange (Compounding Proceedings) Rules, 2000, the compounding authority shall pass an order of compounding **within 180 days** from the date of receipt of the application for compounding.

Analysis: 180 days from 1st January expired on 30th June. The order was passed on 15th August (after 227 days).

Conclusion: The compounding order is procedurally defective. The statutory timeline of 180 days is mandatory on the compounding authority to ensure speedy resolution. Company Z can challenge the delayed order or petition for compliance.

Case Study 22: Compounding Fee Payment Timeline

FACTS OF THE CASE:

A compounding order was passed by the RBI directing Mr. D to pay a compounding fee of ₹2 Lakhs on 1st October. Mr. D paid the amount on 25th October. Did Mr. D comply with the law?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Rule 9 of the Compounding Rules, the sum for which the contravention is compounded shall be paid by way of demand draft within **15 days** from the date of the compounding order.

Analysis: 15 days from 1st October expired on **16th October**. Mr. D paid on 25th October (delayed by 9 days).

Conclusion: Mr. D failed to comply. If the compounding amount is not paid within the strict 15-day window, the compounding order becomes **null and void**. It is deemed that the contravention was never compounded, and the original adjudication and prosecution proceedings under Section 13 will be revived against him.

Case Study 23: Bar on Consecutive Compounding within 3 Years

FACTS OF THE CASE:

In 2023, ABC Ltd compounded an ECB reporting default with the RBI. In 2025, ABC Ltd committed an identical ECB default and applied for compounding again. The RBI Compounding Officer rejected the application. Is the rejection justified?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: The third proviso to Section 15(1) states that no contravention shall be compounded if a similar contravention was committed by the person within a period of **three years** from the date on which the first contravention was compounded.

Analysis: The first contravention was compounded in 2023. The second identical contravention occurred in 2025, which is within the 3-year prohibited window.

Conclusion: The RBI Compounding Officer's rejection is completely justified. ABC Ltd is statutorily barred from seeking compounding for a recurring default within 3 years. It must face regular adjudication proceedings and full penalties under Section 13.

Case Study 24: Inheritance of Immovable Property Outside India (Sec 6(4))

FACTS OF THE CASE:

Mr. Arjun, a resident Indian, inherited an apartment in London from his grandfather, who was a resident in the UK for 40 years before passing away. Can Arjun continue to hold the London apartment without RBI permission?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 6(4) provides an explicit statutory shield to residents. A person resident in India may hold, own, transfer, or invest in foreign currency, foreign security, or any immovable property situated outside India if such asset was:
(a) acquired when he was resident outside India; or
(b) **inherited from a person who was resident outside India**.

Conclusion: Yes, Mr. Arjun can freely hold, maintain, or subsequently sell the London apartment without requiring any permission from the RBI. The inheritance from a non-resident grandfather is fully protected under Section 6(4).

Case Study 25: Guarantees by Holding Company for Subsidiary (Sec 6)

FACTS OF THE CASE:

Indian Parent Ltd provided a corporate guarantee to a foreign bank in Frankfurt on behalf of its wholly-owned German operating subsidiary. The German subsidiary defaulted, and the Frankfurt bank invoked the guarantee against Indian Parent Ltd. Is this guarantee permitted under FEMA?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under the Overseas Investment Regulations, an Indian entity is permitted to issue corporate guarantees on behalf of its foreign subsidiaries (JV/WOS) within the overall Financial Commitment ceiling of **400% of its Net Worth**.

Analysis: Assuming Indian Parent Ltd issued the guarantee within its 400% Net Worth limit and filed the required Form FC with its AD bank, the issuance was valid.

Conclusion: Upon invocation of the guarantee by the Frankfurt bank, Indian Parent Ltd is legally authorized to remit the guaranteed funds from India to Frankfurt through its Authorized Dealer bank to honor its obligation. The remittance is a permitted capital account outflow.

Summary & Key Takeaways for Examination Day

1. **Residential Status (Sec 2(v)):** Requires >182 days stay in preceding FY + Intent test in current year. Leaving for employment/business abroad makes one a PROI *from the date of departure*. Coming to India for employment/business makes one a PRII *from the date of arrival*.
2. **Current Account (Sec 5):** Freedom is the rule. Sched I = Prohibited (lotteries, football pools). Sched II = Govt Ministry approval. Sched III = RBI approval / LRS.
3. **LRS Ceiling:** USD 250,000 per FY for resident individuals. Covers current and capital transactions. Exceptions for medical and studies beyond $250k with estimates.
4. **FDI (NDI Rules, 2019):** Prohibited in Chit funds, Nidhi, Real estate business, TDRs, Lotteries, Gambling. Land border countries (Press Note 3) require mandatory Govt Route.
5. **ODI (OI Rules, 2022):** Total Financial Commitment capped at **400% of Net Worth**. Round-tripping restricted to max **two layers** of offshore subsidiaries.
6. **ECB Framework:** MAMP is 3 years (1 year for manufacturing up to $50M). All-in-cost ceiling is benchmark + 500/550 bps. Negative end-uses: Real estate, capital market equity, working capital.
7. **Immovable Property:** NRIs/OCIs can buy residential/commercial property, but **CANNOT buy agricultural land/farm houses**. Foreign nationals residing abroad can only take leases up to 5 years.
8. **Export Realization (Sec 7):** Must realize within **9 months** (15 months for warehouse exports). AD bank can extend up to 6 months.
9. **Penalties & Compounding:** Quantifiable = 3x sum involved; Non-quantifiable = ₹2 Lakhs + ₹5,000/day. Compounding order within 180 days; fee payable in 15 days. Similar offence cannot be compounded within 3 years.

--- End of Module IV (FEMA, 1999) Detailed Guide ---

ICMAI PAPER 13

CORPORATE AND ECONOMIC LAWS

PART 7: MODULE V (OTHER KEY ECONOMIC LAWS)

PMLA, Competition Act, SARFAESI, Arbitration & Conciliation Act
(Comprehensive Theory + 25 Solved Exam Cases)

Target Examination: December 2026
Syllabus Framework: ICMAI 2022

cmaknowledge.in

Section A: Prevention of Money Laundering Act, 2002 (PMLA)

1. The Offence of Money Laundering (Section 3)

Statutory Definition: Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the **proceeds of crime** including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Proceeds of Crime (Sec 2(1)(u)): Any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.

2. Punishment for Money Laundering (Section 4)

- **Standard Punishment:** 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.
- **Exception (NDPS Act):** Where the proceeds of crime involved relate to any offence under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, the maximum imprisonment may extend to **10 years**.

3. Obligations of Reporting Entities (Section 12)

Reporting entities include banking companies, financial institutions, intermediaries, and designated non-financial businesses and professions (e.g., real estate agents, dealers in precious metals). Their statutory duties include:

Obligation	Statutory Mandate
KYC Compliance	Verify the identity of clients and beneficial owners before undertaking transactions.
Record Maintenance	Maintain a record of all transactions (prescribed nature and value) for a period of **5 years** from the date of the transaction.
Record of Identity	Maintain records of the identity of clients and beneficial owners for a period of **5 years** after the business relationship between a client

	and the reporting entity has ended or the account has been closed, whichever is later.
Confidentiality	Strictly maintain confidentiality of the records and furnish them to the Director of FIU-IND (Financial Intelligence Unit) when requested.

4. Attachment of Property involved in Money Laundering (Section 5)

> The Director or any other officer not below the rank of Deputy Director authorized by the Director may, if he has **reason to believe** (recorded in writing), that any person is in possession of any proceeds of crime and such proceeds are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings, order the **provisional attachment** of such property for a period not exceeding **180 days**.

Every order of attachment made under Section 5(1) shall cease to have effect after the expiry of 180 days or on the date of an order made under sub-section (3) of section 8 (confirmation by the Adjudicating Authority), whichever is earlier.

Section B: The Competition Act, 2002

5. Anti-Competitive Agreements (Section 3)

Section 3 prohibits any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an **Appreciable Adverse Effect on Competition (AAEC)** within India. Such agreements are **void**.

Horizontal Agreements (Section 3(3)) - Presumed to cause AAEC (Strict Liability)

- Agreements that directly or indirectly determine purchase or sale prices.
- Agreements that limit or control production, supply, markets, technical development, or investment.
- Agreements that share the market or source of production (market allocation).
- **Bid Rigging / Collusive Bidding:** Agreements that eliminate or reduce competition for bids.

Vertical Agreements (Section 3(4)) - Judged by "Rule of Reason"

These agreements are prohibited ONLY IF they actually cause AAEC. Examples include:

- **Tie-in Arrangement:** Requiring a purchaser of goods to purchase some other distinct goods.
- **Exclusive Supply Agreement:** Restricting the purchaser from dealing in goods of other sellers.
- **Resale Price Maintenance:** Selling goods with a condition that the resale price shall be a specific price.

6. Abuse of Dominant Position (Section 4)

Dominant Position: A position of strength enjoyed by an enterprise in the relevant market which enables it to operate independently of competitive forces or affect its competitors/ consumers in its favour.

Prohibited Abuses:

1. Imposing unfair or discriminatory conditions or prices in purchase or sale (including **Predatory Pricing** - selling below cost to eliminate competition).
2. Limiting or restricting production of goods or technical/scientific development.
3. Denying market access in any manner.
4. Using dominance in one relevant market to enter into or protect another relevant market.

7. Regulation of Combinations (Mergers & Acquisitions) (Sections 5 & 6)

Combinations exceeding prescribed statutory thresholds (assets or turnover) must be notified to the Competition Commission of India (CCI).

Statutory Provision	Mandate
Mandatory Notice (Sec 6(2))	Any enterprise proposing a combination MUST give notice to the CCI disclosing details of the proposed combination within **30 days** of approval of the proposal by the Board of Directors or execution of any agreement/ document.
Standstill Period (Sec 6(2A))	No combination shall come into effect until **210 days** have passed from the day notice was given to the CCI, OR the CCI passes orders approving it, whichever is earlier.
Void Combinations (Sec 6(1))	Any combination which causes or is likely to cause an Appreciable Adverse Effect on Competition (AAEC) within the relevant market in India shall be **void**.

Section C: SARFAESI Act, 2002

8. Overview and Applicability

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 enables banks and financial institutions to auction residential or commercial properties to recover loans without the intervention of a court/tribunal.

Non-Applicability (Section 31): SARFAESI Act does NOT apply to:

- A lien on any goods, money, or security given by or under the Indian Contract Act.
- Any conditional sale, hire-purchase, or lease.
- Any rights of unpaid seller under the Sale of Goods Act.
- **Agricultural land.**
- Where the principal amount and interest thereon is **less than ₹1 Lakh**.
- Where the amount due is **less than 20%** of the principal amount and interest thereon (i.e., borrower has paid back > 80%).

9. Enforcement of Security Interest (Section 13)

The 60-Day Notice (Sec 13(2))

Where any borrower makes any default and his account is classified as a **Non-Performing Asset (NPA)**, the secured creditor may require the borrower by written notice to discharge his liabilities in full within **60 days** from the date of the notice. The notice must detail the amount payable and the secured assets intended to be enforced.

Measures available to Secured Creditor (Sec 13(4))

If the borrower fails to discharge his liability within 60 days, the secured creditor may take recourse to one or more of the following measures:

1. **Take possession** of the secured assets of the borrower including the right to transfer by way of lease, assignment, or sale.
2. **Take over the management** of the business of the borrower.
3. **Appoint any person (Manager)** to manage the secured assets the possession of which has been taken over by the secured creditor.
4. Require any person who has acquired any of the secured assets from the borrower and from whom money is due to the borrower, to pay the secured creditor.

10. Appeal to DRT (Section 17)

Any person (including borrower) aggrieved by any of the measures referred to in Section 13(4) taken by the secured creditor may make an application along with such fee to the **Debts Recovery Tribunal (DRT)** having jurisdiction, within **45 days** from the date on which such measure had been taken.

If aggrieved by DRT order, an appeal lies to the **Debts Recovery Appellate Tribunal (DRAT)** under Section 18. However, the appeal shall not be entertained unless the borrower deposits **50% of the debt due** (DRAT may reduce this to 25% for recorded reasons).

Section D: Arbitration and Conciliation Act, 1996

11. Arbitration Agreement (Section 7)

- An arbitration agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
- **Mandatory Form:** An arbitration agreement must be **in writing**. It can be a clause in a contract or a separate agreement. An oral agreement to arbitrate is legally invalid.

12. Appointment of Arbitrators (Section 11)

Parties are free to agree on a procedure for appointing the arbitrator(s). If the procedure fails:

- For domestic arbitrations: Application can be made to the **High Court** to appoint the arbitrator.
- For international commercial arbitrations: Application is made to the **Supreme Court**.

13. Setting Aside of Arbitral Award (Section 34)

An arbitral award can be challenged in Court only on specific, extremely restricted grounds:

Grounds for Setting Aside	Time Limit for Challenge (Sec 34(3))
- A party was under some incapacity. - Arbitration agreement is not valid under the law. - Party was not given proper notice of appointment. - The award deals with a dispute not contemplated by the terms of submission. - Composition of the tribunal was not in accordance with the agreement. - Subject matter is not capable of settlement by arbitration. - The award is in conflict with the **Public Policy of India** (fraud, corruption, contravention of fundamental policy).	An application for setting aside an award must be made within **3 months** from the date on which the party received the arbitral award. **Grace Period:** The Court may entertain the application within a further period of **30 days**, but not thereafter, if it is satisfied that the applicant was prevented by sufficient cause.

14. Enforcement of Foreign Awards (New York & Geneva Conventions)

A "foreign award" means an arbitral award on differences relating to matters considered as commercial under the law in force in India, made in the territory of a foreign State which is a signatory to the New York Convention or Geneva Convention (notified by the Central Government).

Enforcement (Sec 48): A foreign award is treated as binding and enforceable as if it were a decree of a court in India. Enforcement can be refused only if the party against whom it is invoked proves incapacity, invalidity of agreement, lack of notice, or if it contradicts the Public Policy of India.

Case Study 1: PMLA - Definition of Proceeds of Crime

FACTS OF THE CASE:

Mr. X committed a bank fraud and acquired a luxury villa in Mumbai. Fearing arrest, he sold the villa to Mr. Y (who was unaware of the fraud) for ₹10 Crores. Mr. X then used the ₹10 Crores to buy shares in a blue-chip company. The Enforcement Directorate (ED) seeks to attach the shares. Mr. X argues the shares were bought with legitimate trading money received from Mr. Y. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 2(1)(u) of PMLA, 'proceeds of crime' means any property derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence, **or the value of any such property**.

Analysis: The original villa was the direct proceeds of crime. When it was converted into cash (₹10 Crores) and subsequently into shares, the shares represent the 'value of such property' or property acquired indirectly from the criminal activity.

Conclusion: Mr. X's defense is invalid. The ED is completely within its statutory powers to attach the shares as they constitute 'proceeds of crime' under the extended definition of PMLA. Money laundering explicitly covers projecting untainted property as tainted via conversion.

Case Study 2: PMLA - Reporting Entities & Record Keeping

FACTS OF THE CASE:

A commercial bank closed the savings account of a suspicious customer on 1st January 2024. The ED demands the KYC details and transaction records of this customer on 1st December 2028. The bank refuses, stating that the account was closed 4 years ago and they routinely destroy records after 3 years to save server space. Evaluate.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 12 of the PMLA, 2002, every reporting entity (which includes banks) must maintain a record of all transactions and maintain records of the identity of clients for a mandatory period of **five years** from the date of the transaction between a client and the reporting entity, or five years after the business relationship has ended or the account has been closed, whichever is later.

Conclusion: The bank has violated the PMLA. Since the account was closed on 1st Jan 2024, the bank is statutorily mandated to preserve the records until at least 1st Jan 2029. Destroying them after 3 years is a severe compliance failure, and the FIU-IND can impose heavy monetary penalties on the bank under Section 13.

Case Study 3: PMLA - Attachment of Property Timeline

FACTS OF THE CASE:

The Deputy Director of ED provisionally attached the properties of a scam-accused individual on 1st March. The Adjudicating Authority failed to confirm this attachment order for the next 7 months due to administrative delays. The accused demands the immediate release of his properties. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 5(1) of the PMLA, a provisional attachment order passed by the Director or Deputy Director shall cease to have effect after the expiry of **180 days** from the date of the order, unless confirmed earlier by the Adjudicating Authority under Section 8(3).

Analysis: The 180-day period from 1st March expires around 28th August. Since 7 months (approx. 210 days) have elapsed without confirmation from the Adjudicating Authority, the provisional attachment order has automatically lapsed by operation of law.

Conclusion: The accused's demand is legally valid. The properties must be released from attachment immediately as the statutory 180-day lifespan of the provisional order has expired without confirmation.

Case Study 4: PMLA - Punishment for NDPS Offences

FACTS OF THE CASE:

Mr. Z is convicted of money laundering. The laundered money was traced back exclusively to an international drug smuggling cartel, which falls under the Narcotic Drugs and Psychotropic Substances (NDPS) Act. The Special Court sentenced him to 9 years of rigorous imprisonment. Mr. Z appeals, arguing the maximum punishment under PMLA is 7 years. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 4 of the PMLA prescribes a standard maximum punishment of 7 years rigorous imprisonment. However, the proviso to Section 4 states that where the proceeds of crime involved in money laundering relate to any offence specified under paragraph 2 of Part A of the Schedule (i.e., offences under the **NDPS Act, 1985**), the maximum punishment shall extend to **10 years**.

Conclusion: Mr. Z's appeal will be dismissed. Because the predicate offence involves the NDPS Act, the enhanced sentencing bracket of up to 10 years applies. The Special Court's sentence of 9 years is fully within statutory limits.

Case Study 5: Competition Act - Horizontal Agreements (Cartels)

FACTS OF THE CASE:

Four major cement manufacturing companies held a secret meeting and signed a written pact to fix the minimum selling price of cement across India and restrict production volumes to create artificial scarcity. The CCI initiated proceedings. The companies argued that the CCI must first prove that their agreement caused an 'Appreciable Adverse Effect on Competition' (AAEC) with economic data. Advise CCI.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 3(3) of the Competition Act deals with horizontal agreements (agreements between enterprises at the same stage of production). It explicitly states that agreements which directly or indirectly determine purchase/sale prices or limit/control production shall be **presumed** to have an appreciable adverse effect on competition (AAEC).

Conclusion: The companies' argument is invalid. Under Section 3(3), a cartel engaged in price-fixing or production-limiting is subject to a **statutory presumption of AAEC (Strict Liability)**. The CCI does not need to prove actual economic harm; the burden of proof shifts entirely to the cement companies to rebut the presumption, which is nearly impossible for hard-core cartels.

Case Study 6: Competition Act - Vertical Agreements (Tie-in)

FACTS OF THE CASE:

A popular manufacturer of printing machines sells its printers with a strict contractual condition: buyers must purchase ink cartridges exclusively from the manufacturer. A competitor files a complaint with the CCI. The manufacturer argues this is necessary to ensure the machines don't break down due to cheap counterfeit ink. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: This is a 'Tie-in arrangement' under Section 3(4) of the Competition Act. Unlike horizontal cartels, vertical agreements are judged by the **'Rule of Reason'**. They are anti-competitive only if the CCI determines they actually cause an AAEC in India.

Conclusion: The CCI will examine the market share of the manufacturer and the business justification. If the manufacturer can prove that the restriction is genuinely necessary to protect the technical integrity of the printer (quality control) and does not substantially foreclose competition in the ink market, it may be permitted. It is not presumed illegal automatically.

Case Study 7: Competition Act - Abuse of Dominance (Predatory Pricing)

FACTS OF THE CASE:

Telecom operator 'Alpha', holding a 65% market share, launches a scheme offering free voice calls and data for two years. This drives three smaller competitors into bankruptcy. A consumer rights group complains this is predatory pricing. Alpha argues that lowering prices benefits consumers, so it cannot be illegal. Evaluate.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 4 prohibits the abuse of a dominant position. Predatory pricing is defined as the sale of goods or provision of services at a price which is **below the cost of production** (as determined by regulations), with a view to **reduce competition or eliminate the competitors**.

Analysis: Alpha holds a 65% share, clearly establishing a 'Dominant Position'. Offering free services is inherently below the cost of production. The destruction of three competitors evidences the intent to eliminate competition.

Conclusion: While low prices initially benefit consumers, predatory pricing is an abuse of dominance designed to create a monopoly, after which prices will be hiked. Alpha's defense is invalid, and the CCI will likely impose heavy penalties and order a halt to the free pricing scheme under Section 4.

Case Study 8: Competition Act - Combination Thresholds

FACTS OF THE CASE:

Company A acquires Company B. The combined assets of the merged entity in India are ₹1,500 Crores and the combined turnover is ₹4,000 Crores. Are they required to notify the CCI?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 5 defines a 'Combination' using specific financial thresholds. For an acquisition where parties are situated in India, it qualifies as a combination if the joint assets exceed ₹2,000 Crores OR the joint turnover exceeds ₹6,000 Crores.

Analysis: Joint Assets = ₹1,500 Cr (Below ₹2,000 Cr threshold). Joint Turnover = ₹4,000 Cr (Below ₹6,000 Cr threshold).

Conclusion: Since neither the asset threshold nor the turnover threshold is breached, the acquisition does NOT constitute a 'Combination' for the purposes of the Competition Act. Therefore, they are **not required to notify the CCI** and can proceed with the merger directly.

Case Study 9: Competition Act - Standstill Period for Combinations

FACTS OF THE CASE:

MegaCorp and OmniCorp signed a merger agreement on 1st Jan and filed a notice with the CCI on 10th Jan. Anticipating a long delay, they decided to integrate their supply chains and share confidential pricing data on 1st March, arguing the merger is practically final. The CCI has not yet passed an order. Is this legal?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 6(2A) imposes a strict **'standstill obligation'**. No combination shall come into effect until **210 days** have passed from the day notice was given to the CCI, OR the CCI passes orders approving it, whichever is earlier.

Conclusion: The integration on 1st March is completely illegal. This is termed 'Gun-Jumping' (giving effect to a combination before CCI approval or expiry of 210 days). Sharing pricing data and integrating supply chains prematurely destroys competition while the CCI is still evaluating the merger. The CCI can impose massive penalties under Section 43A (up to 1% of total turnover/assets of the combination).

Case Study 10: SARFAESI - Non-Applicability Thresholds

FACTS OF THE CASE:

Mr. K took an unsecured personal loan of ₹5 Lakhs from a bank. He defaulted, and the account became an NPA. The bank issued a 60-day notice under Section 13(2) of the SARFAESI Act to seize his household assets. Discuss the validity of the notice.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: The SARFAESI Act empowers secured creditors to enforce **security interests** created in their favor. Furthermore, Section 31 clearly dictates the exceptions to the Act's applicability.

Conclusion: The notice is entirely invalid and void on two grounds:
1. SARFAESI applies exclusively to **secured loans** (where an asset is mortgaged/hypothecated to the bank). An unsecured personal loan does not create a security interest.
2. SARFAESI cannot be used to seize general household assets not specifically pledged as security. The bank must approach a civil court or DRT under standard recovery laws.

Case Study 11: SARFAESI - Minimum Outstanding Debt Exemption

FACTS OF THE CASE:

Ms. L took a home loan of ₹50 Lakhs. Over 15 years, she repaid ₹42 Lakhs of the principal and interest. She then lost her job and defaulted on the remaining ₹8 Lakhs. The bank classified her account as NPA and sent a Section 13(2) possession notice. Does she have a defense under SARFAESI?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 31(j) provides a critical safe harbor for borrowers who have paid off the vast majority of their debt. It states that the provisions of the SARFAESI Act shall not apply to any case in which the amount due is **less than 20% of the principal amount and interest thereon**.

Analysis: Total Principal + Interest (assuming ₹50L was the base) = ₹50 Lakhs. Outstanding amount = ₹8 Lakhs. Percentage outstanding = (8 / 50) x 100 = 16%.

Conclusion: Since the outstanding debt is 16%, which is less than the statutory 20% threshold, the SARFAESI Act completely ceases to apply. The bank's Section 13(2) notice is invalid, and they cannot take summary possession of her house. They must use regular civil recovery channels.

Case Study 12: SARFAESI - Agricultural Land Exemption

FACTS OF THE CASE:

A farmer took a tractor loan of ₹15 Lakhs from a commercial bank and mortgaged his 5-acre agricultural land as collateral. He defaulted, and the bank issued a Section 13(4) notice to take possession and auction the agricultural land. Is the bank's action legal?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 31(i) of the SARFAESI Act explicitly excludes the enforcement of security interest against **any security interest created in agricultural land**.

Conclusion: The bank's action is illegal and ultra vires the SARFAESI Act. To protect the livelihoods of farmers, the legislature strictly barred banks from using summary SARFAESI powers to auction agricultural land. The bank must file a regular recovery suit before a competent court to enforce the mortgage.

Case Study 13: SARFAESI - Pre-deposit for Appeal to DRAT

FACTS OF THE CASE:

A borrower, aggrieved by the DRT's refusal to stop a bank from auctioning his factory under SARFAESI, files an appeal before the Debts Recovery Appellate Tribunal (DRAT). The total debt claimed by the bank is ₹10 Crores. The borrower claims he is bankrupt and requests the DRAT to waive the pre-deposit requirement. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 18 of the SARFAESI Act, an appeal to the DRAT shall not be entertained unless the borrower has deposited with the Appellate Tribunal **50% of the amount of debt due** from him.
The proviso allows the DRAT, for reasons to be recorded in writing, to reduce the amount to not less than **25% of the debt due**.

Conclusion: The DRAT cannot grant a complete waiver of the pre-deposit. The statutory minimum is an absolute floor. The DRAT can, at its maximum discretion, reduce the deposit from ₹5 Crores (50%) to ₹2.5 Crores (25%). If the borrower fails to deposit at least ₹2.5 Crores, the appeal will not be entertained.

Case Study 14: SARFAESI - 60-Day Notice Period Mandatory

FACTS OF THE CASE:

A bank served a Section 13(2) demand notice on an NPA account on 1st September. Fearing the borrower would flee the country, the bank took physical possession of the mortgaged property on 15th September. The borrower challenges this action. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 13(2) mandates that the secured creditor may require the borrower by notice in writing to discharge his liabilities in full within **60 days** from the date of notice. Section 13(4) clearly states that the creditor can take enforcement measures (like taking possession) ONLY **in case the borrower fails to discharge his liability in full within the period specified in sub-section (2)**.

Conclusion: The bank's action is illegal. The 60-day notice period is a strict statutory mandate designed to give the borrower a final chance to cure the default. By taking possession on the 15th day, the bank violated the statute. The DRT will order the bank to immediately restore possession of the property to the borrower.

Case Study 15: Arbitration - Requirement of Written Agreement

FACTS OF THE CASE:

Company A and Company B entered into an oral agreement to supply raw materials. During a phone call, both CEOs agreed that any dispute would be resolved by a sole arbitrator in Delhi. A dispute arises, and Company A invokes arbitration. Company B denies the agreement and files a civil suit. Can Company A compel arbitration?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 7(3) of the Arbitration and Conciliation Act, 1996 mandates unequivocally that **an arbitration agreement shall be in writing**.

Conclusion: Company A cannot compel arbitration. An oral agreement to arbitrate holds zero legal validity under Indian law. Since there is no written arbitration clause in a contract, no exchange of letters/emails evidencing it, or no written pleadings admitting it, the civil court retains full jurisdiction to hear Company B's suit.

Case Study 16: Arbitration - Appointment by Court (Sec 11)

FACTS OF THE CASE:

An arbitration clause in a domestic contract states: 'Parties shall mutually appoint a sole arbitrator within 30 days of notice of dispute.' Notice was served, but 45 days have passed and the parties cannot agree on a name. What is the statutory remedy?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 11(5), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other to so agree, the appointment shall be made, upon request of a party, by the **High Court** or any person or institution designated by such Court.

Conclusion: Since the 30-day window for mutual consent has expired, either party can file an application under Section 11 before the relevant High Court requesting the Chief Justice (or designate) to unilaterally appoint an independent sole arbitrator to resolve the dispute.

Case Study 17: Arbitration - Time Limit to Challenge Award (Sec 34(3))

FACTS OF THE CASE:

An arbitral award was delivered to a losing party on 1st January. Disappointed with the outcome, the party filed an application to set aside the award under Section 34 on 15th May, citing a severe medical emergency that incapacitated their legal team. Will the court entertain the challenge?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 34(3) sets a strict limitation period. An application for setting aside an award may not be made after **three months** have elapsed from the date of receiving the award.
The proviso states that if the Court is satisfied that the applicant was prevented by sufficient cause, it may entertain the application within a further period of **30 days, but not thereafter**.

Analysis:
Date of receipt: 1st January.
3 months expire on: 1st April.

30 days grace period expires on: 1st May.
Application filed on: 15th May.

Conclusion: The Court lacks the statutory jurisdiction to entertain the challenge. The phrase 'but not thereafter' makes the 3 months + 30 days limit an absolute, un-extendable boundary. Even with genuine medical reasons, a delay beyond this maximum 120-day window cannot be condoned by any Indian court.

Case Study 18: Arbitration - Challenge on Merits vs Public Policy

FACTS OF THE CASE:

A contractor challenged an arbitral award under Section 34, arguing that the arbitrator misinterpreted the technical specifications of the contract and made a mathematical error in calculating damages. He wants the judge to re-evaluate the evidence. Will the judge do so?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 34 provides highly restricted grounds for setting aside an award (e.g., incapacity, invalid agreement, breach of natural justice, or conflict with the Public Policy of India). Patent illegality is a ground, but it explicitly states that an award shall not be set aside merely on the ground of an erroneous application of the law or by **re-appreciation of evidence**.

Conclusion: The judge will dismiss the challenge. The Court does not act as a regular appellate court to correct errors of fact, misinterpretation of contract clauses, or mathematical errors, provided the arbitrator's view was plausible. Re-evaluation of evidence is strictly barred in Section 34 proceedings.

Case Study 19: Arbitration - Enforcement of Foreign Award (Public Policy)

FACTS OF THE CASE:

A foreign arbitral tribunal seated in Geneva passed an award directing an Indian company to pay punitive damages arising out of a contract that fundamentally violated India's Foreign Exchange Management Act (FEMA). The winning party seeks enforcement in India. Decide.

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 48 of the Arbitration Act, enforcement of a foreign award may be refused if the Court finds that the enforcement of the award would be **contrary to the public policy of India**. Violation of fundamental statutory laws of India (like FEMA) constitutes a breach of the fundamental policy of Indian law.

Conclusion: The Indian court will refuse to enforce the Geneva award. Enforcing an award that compels an Indian entity to violate FEMA would directly contravene the fundamental policy of Indian law, triggering the 'Public Policy' exception under Section 48.

Case Study 20: Arbitration - Independence of Arbitrator

FACTS OF THE CASE:

Company X and Company Y agreed to arbitration. Company X appointed its ex-Chief Financial Officer (who retired 6 months ago) as the sole arbitrator. Company Y challenges the appointment citing bias. Is the appointment valid?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: The Fifth and Seventh Schedules of the Arbitration Act, introduced to ensure absolute neutrality, list relationships that create justifiable doubts as to an arbitrator's independence. Specifically, the Seventh Schedule dictates that any person who has an employment relationship or a past business relationship (within the last 3 years) with a party is **ineligible** to be appointed as an arbitrator, unless expressly waived in writing by both parties *after* the dispute arises.

Conclusion: The appointment is legally void. Since the ex-CFO was an employee within the last 3 years, he falls under the prohibited categories of the Seventh Schedule and is statutorily ineligible to act as an arbitrator.

Case Study 21: Competition Act - Extraterritorial Jurisdiction (Sec 32)

FACTS OF THE CASE:

Two multi-national tech giants, both incorporated in the USA with no physical offices in India, enter into a global merger agreement in New York. The merger will result in them controlling 90% of the Indian digital advertising market. Can the Competition Commission of India (CCI) investigate this foreign merger?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 32 of the Competition Act gives the CCI extraterritorial jurisdiction. The CCI has the power to inquire into any agreement or combination taking place outside India if such agreement or combination has, or is likely to have, an **Appreciable Adverse Effect on Competition (AAEC) in India**.

Conclusion: Yes, the CCI has full jurisdiction. Even though the entities are foreign and the merger was signed abroad, the fact that it will create a 90% monopoly in the Indian digital advertising market satisfies the AAEC test. The CCI can block the merger's applicability within Indian territory or impose structural remedies.

Case Study 22: Competition Act - Cartel Leniency Program (Sec 46)

FACTS OF THE CASE:

Three steel manufacturers are part of an illegal price-fixing cartel. Manufacturer A secretly approaches the CCI, submits definitive internal emails proving the cartel's existence, and cooperates fully. What benefit can Manufacturer A expect?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 46 of the Competition Act provides for a **Leniency Programme**. The CCI may impose a lesser penalty on a member of a cartel if it makes a full, true, and vital disclosure regarding the cartel, provided the disclosure is made before the Director General submits the investigation report.

Conclusion: Manufacturer A, acting as a 'whistleblower', can expect a significant reduction in penalties (up to 100% reduction for the first applicant providing vital evidence). The other two manufacturers will face the full brunt of the anti-cartel penalties (up to 10% of turnover or 3 times the profit, whichever is higher).

Case Study 23: SARFAESI - Rights of Tenant in Mortgaged Property

FACTS OF THE CASE:

A bank issues a notice to take physical possession of a mortgaged commercial building under SARFAESI. However, the building is occupied by a tenant holding a valid, registered lease agreement executed 3 years before the mortgage was created. Can the bank forcibly evict the tenant using summary SARFAESI powers?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision & SC Precedent: The Supreme Court has clarified that the SARFAESI Act does not override the statutory rights of a bona fide tenant. If a valid lease was created prior to the mortgage, or in accordance with the Transfer of Property Act, the tenant's rights are protected.

Conclusion: The bank cannot forcefully evict the bona fide tenant using summary powers under Section 13(4). The bank takes symbolic possession of the property and becomes the new landlord (entitled to receive the rent), but cannot physically dispossess the tenant until the lease term expires or is terminated as per standard rent control laws.

Case Study 24: PMLA - Burden of Proof (Sec 24)

FACTS OF THE CASE:

During a money laundering trial, the prosecution presents bank statements showing ₹5 Crores of unexplained cash deposits in the accused's account. The accused refuses to speak, claiming the prosecution must prove beyond reasonable doubt that the money is 'proceeds of crime'. Is his legal strategy sound?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Section 24 of the PMLA radically alters standard criminal jurisprudence regarding the burden of proof. It states that when a person is accused of having committed the offence of money laundering, the burden of proving that proceeds of crime are **untainted property** shall be on the **accused**.

Conclusion: His strategy will fail. Once the prosecution establishes the existence of the unexplained money linked to a scheduled offence, the statutory presumption applies. The burden of proof strictly shifts to the accused to prove the legitimate source of the ₹5 Crores. Silence will lead to conviction.

Case Study 25: Arbitration - Interim Measures by Arbitral Tribunal (Sec 17)

FACTS OF THE CASE:

During an ongoing arbitration proceeding, one party starts selling off its factory machinery to defeat the eventual execution of the award. The other party asks the Arbitral Tribunal to pass an injunction freezing the sale. Does the Tribunal have the power to pass such interim orders, and are they enforceable?

LEGAL PROVISION, STATUTORY ANALYSIS & CONCLUSION:

Legal Provision: Under Section 17 of the Arbitration Act, the Arbitral Tribunal has the power to grant interim measures of protection (including freezing assets, injunctions, or appointing receivers) during the arbitral proceedings.
Furthermore, any order issued by the arbitral tribunal under Section 17 shall be deemed to be an order of the Court for all purposes and shall be **enforceable under the Code of Civil Procedure, 1908**, in the same manner as if it were an order of the Court.

Conclusion: Yes, the Arbitral Tribunal has full statutory authority to pass an injunction freezing the sale of machinery. This interim order is legally binding and is enforceable precisely like an injunction issued by a regular civil court.

Summary & Key Takeaways for Examination Day

1. **PMLA (2002):** "Proceeds of crime" is the core concept (includes converted/indirect value). Standard penalty: 3-7 years rigorous imprisonment. NDPS offences: up to 10 years. Reporting entities MUST retain records for 5 years. Provisional attachment u/s 5 lasts for maximum 180 days without confirmation. Burden of proof is always on the accused.
2. **Competition Act (2002):** Horizontal agreements (Cartels/Bid rigging) suffer from *Strict Liability* (presumed AAEC). Vertical agreements (Tie-in/Exclusive supply) follow the *Rule of Reason*. Combinations require mandatory notice to CCI within 30 days and suffer a 210-day standstill period to prevent gun-jumping.
3. **SARFAESI Act (2002):** Applicable only to secured debts > ₹1 Lakh where outstanding is ≥ 20%. Strictly exempts agricultural land. Process: 60-day notice u/s 13(2) followed by possession u/s 13(4). Appeals to DRT (45 days), then DRAT (Minimum 50% / 25% pre-deposit mandatory).
4. **Arbitration (1996):** Agreements MUST be in writing. Sole arbitrators appointed by High Court if parties fail to agree in 30 days. Sec 34 challenge limits are absolute: 3 months + 30 days grace period maximum. Re-appreciation of evidence is strictly barred in challenges. Foreign awards can be blocked if they violate the "Public Policy of India".

--- End of Module V (Other Key Economic Laws) Detailed Guide ---

ICMAI PAPER 13

CORPORATE AND ECONOMIC LAWS

PART 8: EXAM SIMULATIONS & COMPLETE PROBLEM SOLVER

MOCK TEST PAPER - 1 (Full 100 Marks)
Complete Question Paper + 100% Unabridged ICMAI Suggested Answers

Target Examination: December 2026
Syllabus Framework: ICMAI 2022
Standard: Pure ICMAI Pattern (No Shortcuts / Full Statutory Citations)

cmaknowledge.in

MOCK TEST PAPER - 1: QUESTION PAPER

Time Allowed: 3 Hours | **Maximum Marks:** 100

General Instructions:

1. The figures in the margin on the right indicate full marks.
2. **Section A** is compulsory (15 Multiple Choice Questions x 2 Marks = 30 Marks).
3. In **Section B**, answer any **five** questions out of seven (Questions 2 to 8, 14 Marks each = 70 Marks).
4. Every descriptive answer must cite relevant statutory Sections, Rules, Regulations, and landmark judicial precedents.

SECTION A: MULTIPLE CHOICE QUESTIONS (Compulsory - 30 Marks)

1. Choose the most appropriate alternative for the following (15 x 2 = 30 Marks):

(i) A public company has 1 Managing Director and 3 Non-Executive Directors. The company made adequate net profits of ₹20 Crores computed under Section 198. The maximum annual remuneration payable to all the Non-Executive Directors combined without passing a special resolution is:

A) ₹20 Lakhs (1%) B) ₹60 Lakhs (3%) C) ₹1 Crore (5%) D) ₹2.2 Crores (11%)

(ii) Under the Insolvency and Bankruptcy Code, 2016, an application for withdrawal of an admitted CIRP petition under Section 12A requires the approval of what percentage of voting share of the Committee of Creditors (CoC)?

A) 66% B) 75% C) 90% D) 100%

(iii) Under SEBI (LODR) Regulations, 2015, what is the materiality threshold for Related Party Transactions for a listed company having an annual consolidated turnover of ₹8,000 Crores?

A) ₹1,000 Crores B) ₹800 Crores C) ₹400 Crores D) ₹100 Crores

(iv) Under Section 2(v) of FEMA, 1999, an Indian citizen who went abroad on 15th July 2025 for permanent employment becomes a Person Resident Outside India (PROI) with effect from:

A) 1st April 2025 B) 15th July 2025 C) 1st April 2026 D) After completion of 182 days abroad

(v) Under Section 180(1)(c) of the Companies Act, 2013, temporary loans obtained by a company from its bankers in the ordinary course of business are:

A) Included in borrowing limits B) Excluded from borrowing limits C) Permitted only via Special Resolution D) Capped at 10% of net worth

(vi) In a Pre-Packaged Insolvency Resolution Process (PPIRP) under Chapter III-A of IBC, 2016, who remains in management and control of the Corporate Debtor?

A) Interim Resolution Professional B) Committee of Creditors C) Existing Board of Directors / Promoters D) Liquidator

(vii) Under Section 31 of the SARFAESI Act, 2002, the provisions of the Act shall NOT apply to any security interest created in:

A) Commercial office space B) Industrial plant & machinery C) Agricultural land D) Residential apartments

(viii) Under the Competition Act, 2002, horizontal agreements among competitors to determine purchase or sale prices (cartels) are subject to:

A) Rule of Reason B) Statutory Presumption of AAEC C) Mandatory exemption D) Leniency by default

(ix) Under Section 34(3) of the Arbitration and Conciliation Act, 1996, what is the maximum grace period a court can grant beyond the standard 3-month period to challenge an arbitral award?

A) 15 days B) 30 days C) 45 days D) 60 days

(x) Under SEBI (SAST) Regulations, 2011, what is the minimum offer size that an acquirer must make in a mandatory public open offer?

A) 20% B) 25% C) 26% D) 51%

(xi) Under Section 196(3) of the Companies Act, 2013, appointment of a person who has attained the age of 70 years as Managing Director can be made by passing a:

A) Ordinary Resolution B) Special Resolution C) Unanimous Board Resolution D) Central Government approval only

(xii) Under PMLA, 2002, what is the maximum duration for which a provisional attachment order passed under Section 5(1) remains valid without confirmation by the Adjudicating Authority?

A) 90 days B) 120 days C) 180 days D) 365 days

(xiii) For an unlisted company seeking an IPO under SEBI (ICDR) Regulations, what is the minimum required operating profit history under the standard route?

A) Operating profit in at least 2 out of 3 years B) Operating profit in each of the preceding 3 full years C) ₹15 Cr in the latest year D) Profitability is not required

(xiv) Under Section 230(4) of the Companies Act, 2013, an objection to a scheme of compromise or arrangement can be raised only by creditors having an outstanding debt of not less than:

A) 1% of total debt B) 5% of total debt C) 10% of total debt D) 25% of total debt

(xv) Under FEMA, what is the maximum Financial Commitment an Indian Entity can make under the Overseas Direct Investment (ODI) automatic route?

A) 100% of Net Worth B) 200% of Net Worth C) 400% of Net Worth D) 500% of Net Worth

SECTION B: DESCRIPTIVE QUESTIONS (Answer any 5 out of 7 - 70 Marks)

Question 2 [14 Marks]

(a) [8 Marks] Zenith Ltd, a listed manufacturing company, suffered an operational loss of ₹15 Crores during the financial year ended 31st March 2026. The company's capital structure as on 31st March 2025 is as follows:
- Paid-up Equity Share Capital: ₹60 Crores
- 10% Redeemable Preference Share Capital: ₹20 Crores
- Securities Premium Account: ₹15 Crores
- General Reserve: ₹35 Crores
- Revaluation Reserve: ₹20 Crores
- Long-term Loans repayable after 2 years: ₹40 Crores
- Working Capital Overdraft from SBI: ₹15 Crores
- Accumulated Business Losses: ₹10 Crores
- Investments in mutual funds (not an investment company): ₹20 Crores

The Board of Directors wishes to pay an annual remuneration of ₹1.5 Crores to its Managing Director. Compute the "Effective Capital" of the company under Schedule V of the Companies Act, 2013, and determine the maximum managerial remuneration payable with and without a Special Resolution.

(b) [6 Marks] The Board of Directors of Apex Ltd convened a Board meeting by giving 3 days' written notice to transact urgent corporate business. The company has 3 Independent Directors. Due to unavoidable circumstances, none of the Independent Directors could attend the meeting. The other directors present unanimously approved the issuance of debentures. Explain the legal validity of the decisions taken at this meeting under Section 173(3) of the Companies Act, 2013.

Question 3 [14 Marks]

(a) [8 Marks] Alpha Ltd and Beta Ltd formulated a Scheme of Amalgamation under Section 230 of the Companies Act, 2013. The meeting of unsecured creditors was convened under NCLT directions. The total value of unsecured debt of Alpha Ltd is ₹120 Crores held by 80 creditors. At the meeting, 50 creditors holding debt worth ₹90 Crores were present and voted. 35 creditors holding debt worth ₹65 Crores voted in favor of the scheme, while 15 creditors holding debt worth ₹25 Crores voted against it. A group of dissenting creditors holding debt worth ₹5 Crores objects before the NCLT that the scheme was not approved by 75% of the total debt of the company. Decide whether the scheme has been legally approved by the creditors.

(b) [6 Marks] Fast Track Ltd is a public company with a paid-up capital of ₹40 Crores. It holds 100% equity shares of Slow Track Pvt Ltd (a Wholly Owned Subsidiary). Both companies want to merge using the Fast Track Merger route under Section 233 without approaching the NCLT. A shareholder objects that Fast Track Mergers are exclusively available to "Small Companies" and cannot be utilized by a public company with ₹40 Crores capital. Examine the objection.

Question 4 **[14 Marks]**

(a) [8 Marks] Sigma Logistics supplied warehousing services to Delta Manufacturing Ltd under an annual contract. On 10th January 2026, Delta emailed Sigma stating that goods worth ₹30 Lakhs were damaged due to leakage in the warehouse roof, and Delta was adjusting this loss against pending invoices. On 1st February 2026, Sigma issued a Demand Notice under Section 8 of the IBC demanding payment of ₹1.15 Crores. Delta responded within 8 days reiterating the roof leakage dispute and enclosing the earlier email. Sigma then filed a Section 9 petition before the NCLT. Discuss whether the NCLT will admit the petition in light of the landmark judgment in *Mobilox Innovations Pvt Ltd vs Kirusa Software Pvt Ltd*.

(b) [6 Marks] During the Corporate Insolvency Resolution Process (CIRP) of a Corporate Debtor, the Resolution Professional placed a Resolution Plan submitted by a consortium before the Committee of Creditors (CoC). In the voting, 62% of financial creditors voted in favor, 25% voted against, and 13% abstained. The RP declared the plan rejected. The consortium claims that since the favorable votes (62%) exceeded the opposing votes (25%), the plan should be treated as approved. Decide under Section 30(4) of the IBC.

Question 5 **[14 Marks]**

(a) [8 Marks] In the liquidation of Omega Ltd under the IBC, 2016, the Liquidator realized net liquidation proceeds of ₹80 Crores from the sale of unencumbered assets. The following claims were admitted by the Liquidator:
- Liquidation Process Costs: ₹6 Crores
- Workmen's dues for the period of 24 months preceding liquidation: ₹24 Crores
- Debts due to Secured Financial Creditors (who relinquished security interest): ₹56 Crores
- Wages and salaries due to employees (other than workmen) for 12 months: ₹10 Crores
- Debts due to Unsecured Financial Creditors: ₹30 Crores
- Central and State Government tax dues: ₹12 Crores

Calculate the distribution of proceeds to each category of claimants under the Waterfall Mechanism of Section 53 of the IBC, 2016.

(b) [6 Marks] Under the SEBI (Prohibition of Insider Trading) Regulations, 2015, explain the statutory concept and mandatory operational conditions of a 'Trading Plan' under Regulation 5. Can an insider cancel an approved trading plan if the market conditions become adverse?

Question 6 [14 Marks]

(a) [8 Marks] Mr. Ramesh, an Indian citizen and resident, inherited a residential apartment in London from his grandfather, who had lived in the UK for 35 years as a person resident outside India before his demise. Mr. Ramesh wishes to sell the London apartment and reinvest the proceeds into shares of a US-listed company, holding the shares abroad. Examine whether Mr. Ramesh can hold and reinvest these foreign assets without RBI permission under Section 6(4) of FEMA, 1999.

(b) [6 Marks] A registered export house in Mumbai exported engineered goods worth USD 600,000 to an importer in Germany on 1st May 2025. As of 28th February 2026, the German importer has not remitted the payment due to severe currency control restrictions in Europe. State the statutory time limit for realization of export proceeds under FEMA and discuss the powers of Authorized Dealer banks to grant extensions.

Question 7 [14 Marks]

(a) [8 Marks] Five leading tire manufacturers in India, controlling 85% of the domestic market, entered into an unwritten gentleman's agreement to increase tire prices by 15% simultaneously and limit production quotas. When the Competition Commission of India (CCI) initiated an inquiry under Section 3(3), the manufacturers argued that there was no written contract, and therefore no 'agreement' existed under the Act, and furthermore, the CCI must prove actual market harm. Analyze the validity of the manufacturers' contentions.

(b) [6 Marks] The Enforcement Directorate (ED) provisionally attached a commercial plot of land belonging to Mr. Alok under Section 5(1) of the PMLA on 1st October 2025. The Adjudicating Authority did not pass any confirmation order under Section 8(3) until 15th May 2026. On 16th May 2026, Mr. Alok executed a registered sale deed transferring the land to a third party. The ED declared the sale deed void. Evaluate the legal position.

Question 8 [14 Marks]

Write detailed short notes on any TWO of the following (7 Marks each):

(a) Measures available to a Secured Creditor under Section 13(4) of the SARFAESI Act, 2002 upon default by a borrower after the expiry of the 60-day notice period.

(b) The statutory grounds for setting aside an Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996, and the strict limitation period prescribed under Section 34(3).

(c) The constitution, functions, and unique democratic voting rules governing a 'Producer Company' under Chapter XXIA of the Companies Act, 2013.

SUGGESTED ANSWERS: MOCK TEST 1

SECTION A: MULTIPLE CHOICE QUESTIONS

Q. No.	Correct Option	Statutory Reference & Detailed Justification
(i)	**A) ₹20 Lakhs (1%)**	Under Section 197(1) of the Companies Act, 2013, if a public company has a Managing Director or Whole-time Director, the remuneration payable to all non-executive directors combined cannot exceed **1% of the net profits** (1% of ₹20 Cr = ₹20 Lakhs). If there is no MD/WTD, the limit is 3%.
(ii)	**C) 90%**	Section 12A of the IBC, 2016 provides that the Adjudicating Authority may allow the withdrawal of an admitted application under section 7, 9, or 10 on an application made by the applicant with the approval of **ninety percent (90%)** voting share of the Committee of Creditors.
(iii)	**B) ₹800 Crores**	Regulation 23 of SEBI (LODR) Regulations defines a Material Related Party Transaction as one exceeding **₹1,000 Crores OR 10% of annual consolidated turnover**, whichever is *lower*. Here, 10% of ₹8,000 Cr = ₹800 Crores, which is lower than ₹1,000 Crores.
(iv)	**B) 15th July 2025**	Under Section 2(v)(i)(A) of FEMA, 1999, an individual who leaves India for or on taking up employment outside India ceases to be a Person Resident in India (PRII) and becomes a PROI **from the exact date of his departure**, irrespective of his stay in the preceding FY.
(v)	**B) Excluded from borrowing limits**	Explanation to Section 180(1)(c) of the Companies Act, 2013 explicitly excludes "temporary loans obtained from the company's bankers in the ordinary course of business" (such as cash credit, overdrafts, discounting of bills) from the calculation of aggregate borrowings.
(vi)	**C) Existing Board / Promoters**	Unlike standard CIRP which operates on a "Creditor-in-Control" model where the RP displaces the Board, PPIRP under Section 54H follows a **"Debtor-in-Possession"** model where management remains with the existing Board under RP supervision.
(vii)	**C) Agricultural land**	Section 31(i) of the SARFAESI Act, 2002 categorically states that the provisions of the Act shall not apply to any security interest created in **agricultural land**, protecting farmers from summary foreclosure.
(viii)	**B) Statutory Presumption of AAEC**	Section 3(3) of the Competition Act, 2002 creates a legal rule of *Strict Liability*. Horizontal cartels fixing prices, rigging bids, or limiting supply are **presumed** to cause an Appreciable Adverse Effect on Competition; actual economic harm need not be proven by CCI.

(ix)	**B) 30 days**	Section 34(3) of the Arbitration and Conciliation Act, 1996 sets an outer time limit of 3 months to challenge an award. The proviso permits the Court to condone delay for a maximum period of **30 days, but not thereafter**.
(x)	**C) 26%**	Regulation 3(1) and Regulation 7(1) of SEBI (SAST) Regulations, 2011 mandate that upon triggering the 25% threshold, the acquirer must make an open offer to acquire at least an additional **26%** of total shares from the public shareholders.
(xi)	**B) Special Resolution**	Under Section 196(3)(a) of the Companies Act, 2013, no person who has attained the age of 70 years can be appointed as MD/WTD unless a **Special Resolution** is passed with an explanatory statement annexed to the notice justifying the appointment.
(xii)	**C) 180 days**	Under Section 5(1) of PMLA, 2002, a provisional attachment order passed by the Director/Deputy Director ceases to have effect after the expiry of **180 days** from the date of the order unless confirmed earlier by the Adjudicating Authority under Section 8(3).
(xiii)	**B) Operating profit in each of preceding 3 full years**	Regulation 6(1) of SEBI (ICDR) Regulations, 2018 mandates that under the standard profitability route, the issuer must have an average operating profit of at least ₹15 Crores during preceding 3 years, with **operating profit in each of these 3 years**.
(xiv)	**B) 5% of total debt**	Proviso to Section 230(4) of the Companies Act, 2013 restricts locus standi to object to a compromise/arrangement to persons holding not less than 10% shareholding OR creditors having outstanding debt of not less than **5% of the total debt**.
(xv)	**C) 400% of Net Worth**	Under the Foreign Exchange Management (Overseas Investment) Rules, 2022, the total financial commitment made by an Indian entity in all foreign entities taken together shall not exceed **400% of its Net Worth** as per the last audited balance sheet.

SECTION B: DESCRIPTIVE QUESTIONS

Answer to Question 2(a): Computation of Effective Capital & Managerial Remuneration

1. Legal Framework (Schedule V - Part II):

Where in any financial year, a company has no profits or its profits are inadequate, it may pay remuneration to its managerial personnel within the limits specified in Section II of Part II of Schedule V, determined on the basis of the **Effective Capital** of the company.

2. Computation of Effective Capital of Zenith Ltd (as on 31-Mar-2025):

Particulars	Treatment under Schedule V	Amount (₹ in Crores)
Paid-up Equity Share Capital	Included in full	60.00
10% Redeemable Preference Share Capital	Included in full	20.00
Securities Premium Account	Included in full	15.00
General Reserve	Included (Free reserve)	35.00
Revaluation Reserve	**Excluded** (Not a free reserve)	NIL
Long-term Loans (Repayable after 2 years)	Included (Repayable after 1 year)	40.00
Working Capital Overdraft from SBI	**Excluded** (Short-term bank borrowing)	NIL
Total Additions (A)		**170.00**
Less: Accumulated Business Losses	Deducted in full	(10.00)
Less: Investments in mutual funds	Deducted in full (Non-investment company)	(20.00)
Total Deductions (B)		**(30.00)**
Effective Capital (A - B)		**₹140.00 Crores**

3. Maximum Permissible Remuneration Payable:

As per the statutory scale under Schedule V for an Effective Capital tier of **"₹100 Crores and above but less than ₹250 Crores"**:

- **Without Special Resolution (by Ordinary Resolution):** Maximum limit is **₹120 Lakhs (₹1.20 Crores) per annum**.

- **With Special Resolution:** The limit can be doubled by passing a Special Resolution in a general meeting, allowing up to **₹240 Lakhs (₹2.40 Crores) per annum**.

Conclusion: The proposed remuneration is ₹1.5 Crores (₹150 Lakhs). Since ₹150 Lakhs exceeds the ordinary limit of ₹120 Lakhs but is well within the ceiling of ₹240 Lakhs, Zenith Ltd can legally pay ₹1.5 Crores to its Managing Director **provided it convenes a general meeting and passes a Special Resolution** approving the payment.

Answer to Question 2(b): Validity of Board Meeting at Shorter Notice (Sec 173(3))

1. Statutory Provisions under Section 173(3):

Under Section 173(3) of the Companies Act, 2013, a meeting of the Board of Directors may be called by giving not less than seven days' notice in writing. However, 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**.

2. Proviso Mechanism in Absence of Independent Director:

The proviso to Section 173(3) explicitly addresses situations where no independent director is able to attend such a short-notice meeting: *"In case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors, and shall be final only on* ***ratification thereof by at least one independent director****, if any."*

3. Legal Analysis & Conclusion:

The meeting called on 3 days' notice was legally convened for urgent business. However, since none of the 3 Independent Directors attended, the resolution unanimously approving the issuance of debentures is **not immediately operative or final**. The company must circulate the minutes/decisions of the meeting to all directors, and the resolution will acquire legal validity and force **only after it is formally ratified in writing by at least one Independent Director** of Apex Ltd.

Answer to Question 3(a): Creditors' Approval Threshold in Mergers (Sec 230(6))

1. Legal Provision (Section 230(6)):

Under Section 230(6) of the Companies Act, 2013, where at a meeting called under Section 230(1), a compromise or arrangement is agreed to by a **majority in number representing three-fourths in value (75%)** of the creditors, or class of creditors, or members, or class of members, as the case may be, **present and voting** either in person or by proxy or by postal ballot, it shall be binding on all if sanctioned by the Tribunal.

2. Analysis of Voting Data:

- Total unsecured debt of company: ₹120 Crores (80 creditors). *(Irrelevant for computation; law considers only those present and voting).*
- Creditors present and voting: 50 creditors holding debt of ₹90 Crores.
- **Test 1: Majority in Number:** Total present & voting = 50. Majority required (>50%) = 26 creditors. Creditors voting in favor = **35 creditors**. *(Test 1 is satisfied: 35 > 26).*
- **Test 2: Three-fourths (75%) in Value of those Present & Voting:** Total value present & voting = ₹90 Crores. 75% of ₹90 Cr = **₹67.50 Crores**. Value of debt voting in favor = **₹65 Crores**. *(Test 2 is NOT satisfied: ₹65 Cr < ₹67.50 Cr).* Percentage achieved is (65 / 90) x 100 = **72.22%**.

3. Conclusion:

Although the scheme achieved a majority in number (35 out of 50), it failed to achieve the mandatory statutory threshold of **75% in value of the creditors present and voting** (achieved only 72.22%). Therefore, the scheme has **NOT been legally approved** by the creditors under Section 230(6). The NCLT cannot sanction the amalgamation scheme in its current form.

Answer to Question 3(b): Fast Track Mergers for Holding & WOS (Sec 233)

1. Legal Provision (Section 233(1)):

Section 233 of the Companies Act, 2013 provides a fast-track merger route without approaching the NCLT. As per Section 233(1), a scheme of merger or amalgamation may be entered into between:

1. Two or more small companies; or
2. **A holding company and its wholly-owned subsidiary company**; or
3. Such other class or classes of companies as may be prescribed (which includes Start-up companies).

2. Analysis & Rebuttal of Shareholder's Objection:

The shareholder’s contention that Section 233 applies only to 'Small Companies' is factually and legally incorrect. Clause (b) of Section 233(1) explicitly provides an independent, standalone category for mergers between a **Holding Company and its Wholly Owned Subsidiary (WOS)**. There is no statutory ceiling on the paid-up capital or turnover of the holding company when merging with its WOS.

3. Conclusion:

Fast Track Ltd (Paid-up capital ₹40 Cr) and Slow Track Pvt Ltd (WOS) are fully eligible to execute their merger under Section 233 through the approval of the Regional Director, Registrar of Companies, and Official Liquidator, bypassing the lengthy NCLT route. The shareholder's objection is without merit.

Answer to Question 4(a): Pre-Existing Dispute under IBC (Mobilox Innovations Ruling)

1. Statutory Framework (Section 8 & 9 of IBC, 2016):

Under Section 8(1), an Operational Creditor must deliver a Demand Notice for an unpaid operational debt. Under Section 8(2), the Corporate Debtor has 10 days to bring to the notice of the operational creditor the existence of a **dispute**, if any, or record of pendency of a suit or arbitration proceedings filed before the receipt of such notice. Under Section 9(5)(ii)(d), the Adjudicating Authority must reject the application if notice of dispute has been received by the operational creditor.

2. Judicial Precedent (Mobilox Innovations Pvt Ltd vs Kirusa Software Pvt Ltd):

The Supreme Court laid down the definitive test for evaluating disputes under Section 9: *"The Adjudicating Authority at this stage is not required to be satisfied whether the defense will succeed or not. All that the AA is to see is whether there is a **plausible contention** requiring further investigation, and that the 'dispute' is not a patently feeble legal argument or an assertion of fact unsupported by evidence... It must be a **pre-existing dispute**, which means a dispute that existed before the receipt of the demand notice."*

3. Analysis & Conclusion:

Delta Manufacturing Ltd sent an email on 10th January 2026 alleging roof leakage and damaged goods, which was prior to the service of the Demand Notice on 1st February 2026. The email proves beyond doubt that a dispute regarding the quality of service existed *prior* to the issuance of the demand notice. The defense is plausible and supported by contemporaneous communication. Therefore, following the *Mobilox Innovations* precedent, the NCLT will **reject the Section 9 petition**. Sigma Logistics must pursue its claim before a competent Civil Court.

Answer to Question 4(b): CoC Voting Threshold for Resolution Plan (Sec 30(4))

1. Legal Provision (Section 30(4) of IBC, 2016):

Under Section 30(4), the Committee of Creditors may approve a resolution plan by a vote of **not less than sixty-six per cent (66%) of voting share of the financial creditors**, after considering its feasibility and viability, the manner of distribution, and other requirements specified by the Board.

2. Interpretation of Voting Share & Abstentions:

Under Section 5(28), 'voting share' means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the total financial debt. The statute requires 66% of the **total voting share of the CoC**, not merely 66% of the members present and voting. Members who abstain are treated as having not voted in favor.

3. Analysis & Conclusion:

The plan received 62% affirmative votes. Because the law sets a strict threshold of **not less than 66% of the voting share** of the financial creditors, the 62% vote falls short of the statutory requirement. The consortium's argument that favorable votes exceeded opposing votes is legally untenable. The Resolution Professional acted with complete legal propriety in **declaring the resolution plan rejected**.

Answer to Question 5(a): Liquidation Waterfall Mechanism (Sec 53)

1. Statutory Priority Hierarchy under Section 53(1):

The proceeds from the sale of the liquidation assets shall be distributed in the following strict order of priority:

1. Rank 1 (Sec 53(1)(a)): Insolvency resolution process costs and liquidation costs paid in full.
2. Rank 2 (Sec 53(1)(b)): Workmen's dues for 24 months preceding liquidation AND debts owed to secured creditors who have relinquished security interest, ranking *pari passu*.
3. Rank 3 (Sec 53(1)(c)): Wages and unpaid dues to employees (other than workmen) for 12 months.
4. Rank 4 (Sec 53(1)(d)): Financial debts owed to unsecured creditors.
5. Rank 5 (Sec 53(1)(e)): Government dues (2 years) and unpaid balance of secured creditors following enforcement outside liquidation, ranking *pari passu*.

2. Step-by-Step Distribution of ₹80 Crores Proceeds:

Rank / Category of Claim	Amount Claimed (₹ Cr)	Amount Distributed (₹ Cr)	Balance Available (₹ Cr)
Total Liquidation Proceeds Available			**80.00**
Rank 1: Liquidation Process Costs	6.00	**6.00** (Paid in full)	74.00
Rank 2: Workmen Dues (24m: ₹24 Cr) & Secured FCs (Relinquished: ₹56 Cr)	80.00 (24 + 56)	**74.00** (Abates proportionately)	**0.00 (NIL)**
Rank 3: Employee Wages (12 months)	10.00	**0.00** (NIL)	0.00
Rank 4: Unsecured Financial Creditors	30.00	**0.00** (NIL)	0.00
Rank 5: Central & State Government Taxes	12.00	**0.00** (NIL)	0.00

3. Working Notes for Rank 2 Pari Passu Abatement:

Funds available after Rank 1 = ₹74 Crores. Total Rank 2 claims = ₹24 Cr (Workmen) + ₹56 Cr (Secured Creditors) = ₹80 Crores.
Since funds (₹74 Cr) are insufficient to pay ₹80 Cr in full, payments abate in the ratio of claims: 24 : 56, which simplifies to **3 : 7**.
- **Workmen's Share:** (3 / 10) x ₹74 Crores = **₹22.20 Crores** (Shortfall of ₹1.80 Cr).
- **Secured Creditors' Share:** (7 / 10) x ₹74 Crores = **₹51.80 Crores** (Shortfall of ₹4.20 Cr).
All subsequent claimants (Employees, Unsecured FCs, and Government) receive **NIL**.

Answer to Question 5(b): Trading Plans under SEBI (PIT) Regulations, 2015

1. Concept & Statutory Purpose (Regulation 5):

Regulation 5 of SEBI (PIT) Regulations, 2015 provides an exceptional statutory safe harbor for insiders who may perpetually possess Unpublished Price Sensitive Information (UPSI) (such as CEOs, CFOs, Managing Directors). It permits them to formulate a pre-determined **Trading Plan**, submit it to the Compliance Officer for approval and public disclosure, and trade securities legally.

2. Mandatory Operational Conditions:

- **Cooling-off Period (Reg 5(2)(i)):** The trading plan shall not entail commencement of trading earlier than **six months** from the public disclosure of the plan on the stock exchange.
- **Blackout Period Exclusion (Reg 5(2)(ii)):** The plan shall not entail trading for the period between the 20th trading day prior to the last day of any financial period for which results are required to be announced, and the 2nd trading day after the disclosure of such financial results.
- **Minimum Duration (Reg 5(2)(iii)):** The plan must entail trading for a period of not less than **twelve months**.
- **No Overlap (Reg 5(2)(iv)):** The insider shall not formulate multiple overlapping trading plans.
- **Value / Quantity Limits:** The plan must set out either the value of trades or the number of securities to be traded along with specific dates or intervals.

3. Irrevocability of Trading Plan:

Under Regulation 5(4), the trading plan once approved shall be **irrevocable**, and the insider shall **mandatorily have to implement the plan** without being entitled to deviate from it or execute any trade outside its scope. The insider **CANNOT cancel** the trading plan merely because market prices have fallen or conditions have become adverse. The only exception is where UPSI in possession of the insider at the time of formulation has not become generally available at the scheduled time of trading, in which case trading is deferred.

Answer to Question 6(a): Foreign Assets Acquired via Inheritance (Sec 6(4) of FEMA)

1. Legal Provision (Section 6(4) of FEMA, 1999):

Section 6(4) provides an absolute statutory safe harbor to resident individuals holding foreign assets: *"A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India **or inherited from a person who was resident outside India**."*

2. Overseas Investment Rules, 2022 Integration:

Under the Foreign Exchange Management (Overseas Investment) Rules, 2022, a resident individual who has inherited foreign immovable property under Section 6(4) is fully permitted to hold, sell, or transfer such property. Furthermore, the sale proceeds realized from such inherited property can be freely used to **reinvest in foreign securities (Overseas Portfolio Investment / ODI)** without requiring prior approval from the Reserve Bank of India, provided the transaction is routed through an Authorized Dealer bank and reported in the prescribed Form FC/OPI.

3. Conclusion:

Mr. Ramesh inherited the London flat from his non-resident grandfather, making it fully protected under Section 6(4). He has the complete legal right under FEMA to sell the London flat and reinvest the sale proceeds into shares of a US-listed company, holding those shares offshore, without seeking any prior permission from the RBI.

Answer to Question 6(b): Export Realization Timelines & Bank Extensions

1. Statutory Realization Period:

Under Section 7 of FEMA, 1999 read with Regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, the full value of goods, software, or services exported shall be realized and repatriated to India within **nine months** from the date of export.

2. Application to Facts:

The goods were exported on 1st May 2025. The statutory 9-month window expired on **31st January 2026**. As of 28th February 2026, the export proceeds have not been realized. Therefore, a technical contravention of Section 7 has occurred unless an extension has been formally granted.

3. Powers of Authorized Dealer (AD) Banks to Grant Extensions:

Under RBI Master Directions, Authorized Dealer Category-I banks are empowered to grant **extensions of time up to six months at a time** beyond the original 9-month period, provided that:
(i) The export realization default is due to reasons beyond the control of the exporter (e.g., European currency controls);
(ii) The exporter has made all bona fide efforts to recover the dues; and
(iii) The exporter is not on the Caution List of the RBI / under investigation by the Enforcement Directorate.
Conclusion: The Mumbai export house must immediately submit an application to its AD Category-I bank enclosing documentary proof of European currency restrictions. The AD bank can legally grant an extension of up to 6 months to regularize the delay.

Answer to Question 7(a): Cartels & Strict Presumption under Competition Act, 2002

1. Statutory Definition of 'Agreement' (Section 2(b)):

Section 2(b) of the Competition Act, 2002 explicitly defines 'agreement' in the widest possible terms: *"Agreement includes any arrangement or understanding or action in concert—(i)* ***whether or not, such arrangement, understanding or action is formal or in writing****; or (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings."*

2. Presumption of Appreciable Adverse Effect on Competition (Section 3(3)):

Section 3(3) regulates horizontal agreements (including cartels) among competitors engaged in identical trade. It provides that any agreement which directly or indirectly determines purchase or sale prices, or limits or controls production, supply, markets, or technical development, shall be **presumed to have an Appreciable Adverse Effect on Competition (AAEC) within India**.

3. Analysis & Rebuttal of Manufacturers' Contentions:

- **Contention 1 (No written contract):** Invalid. Section 2(b) specifically brings unwritten understandings, informal agreements, parallel conduct, and 'gentlemen's agreements' under the ambit of an illegal agreement.
- **Contention 2 (CCI must prove actual harm):** Invalid. Section 3(3) imposes a **statutory presumption of AAEC**. Unlike vertical agreements where the 'Rule of Reason' applies, for cartels, the burden of proof is inverted. The CCI does not have to demonstrate economic damage; the mere existence of price-fixing and production control presumes AAEC.

Conclusion: The tire manufacturers' contentions are legally baseless. The CCI will proceed against the cartel, imposing heavy penalties under Section 27 (up to 3 times the profit or 10% of turnover for each year of the cartel's continuance, whichever is higher).

Answer to Question 7(b): Lifespan of Provisional Attachment under PMLA, 2002

1. Statutory Limitation under Section 5(1):

Section 5(1) of the Prevention of Money Laundering Act, 2002 authorizes the provisional attachment of property involved in money laundering for a period **not exceeding 180 days** from the date of the order. Section 5(3) states that every order of attachment shall cease to have effect on the expiry of the period specified in sub-section (1), or on the date of an order made under Section 8(3), whichever is earlier.

2. Analysis of Dates:

- Date of provisional attachment order: 1st October 2025.
- Statutory 180-day lifespan expired on: **30th March 2026**.
- Date of transfer of land: 16th May 2026 (approx. 227 days after attachment).
- Status on date of transfer: The Adjudicating Authority had NOT confirmed the attachment under Section 8(3).

3. Legal Conclusion:

By operation of law, the provisional attachment order automatically **lapsed and ceased to exist on 30th March 2026** upon the completion of 180 days. Because the attachment order had expired, there was no legal restraint or encumbrance on the property on 16th May 2026. Therefore, Mr. Alok was legally entitled to sell the property, and the registered sale deed executed in favor of the third party is **valid and operative**. The ED's declaration that the sale deed is void is legally unsustainable.

Answer to Question 8(a): Measures of Enforcement under SARFAESI Act (Sec 13(4))

1. Statutory Trigger:

Under Section 13(2), the secured creditor serves a 60-day demand notice on an NPA account. If the borrower fails to discharge his liability in full within 60 days, Section 13(4) empowers the secured creditor to take one or more of the following measures to recover the secured debt:

1. **Take Possession of Secured Assets (Sec 13(4)(a)):** Take physical or symbolic possession of the secured assets of the borrower, including the right to transfer by way of lease, assignment, or sale for realizing the secured asset.
2. **Take Over Management of the Business (Sec 13(4)(b)):** Take over the management of the business of the borrower, including the right to transfer, lease, or sell (only if substantially the whole of the business is pledged as security).
3. **Appoint a Manager (Sec 13(4)(c)):** Appoint any person (by designation as Manager) to manage the secured assets the possession of which has been taken over by the secured creditor.
4. **Garnishee-Style Recovery from Debtors (Sec 13(4)(d)):** Require by notice in writing any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor so much of the money as is sufficient to pay the secured debt.

2. Assistance of Chief Metropolitan Magistrate (Sec 14):

If the borrower resists physical possession, the secured creditor can file an affidavit before the Chief Metropolitan Magistrate (CMM) or District Magistrate (DM) under Section 14, who shall take possession and hand over the assets to the secured creditor.

Answer to Question 8(b): Setting Aside of Arbitral Awards & Limitation (Sec 34)

1. Exclusive Grounds for Setting Aside an Award (Section 34(2)):

An arbitral award can be set aside by a Court ONLY if the party making the application furnishes proof that:

- A party was under some legal incapacity;
- The arbitration agreement is not valid under the law to which the parties have subjected it;
- The applicant was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present his case (violation of natural justice);
- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
- The composition of the arbitral tribunal was not in accordance with the agreement of the parties;
- The subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force; or
- The arbitral award is in conflict with the **Public Policy of India** (induced by fraud/corruption, contrary to the fundamental policy of Indian law, or basic notions of morality and justice).

Statutory Bar: Section 34(2A) clarifies that an award shall **not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence**.

2. Strict Limitation Period (Section 34(3)):

Under Section 34(3), an application for setting aside must be made within **three months** from the date on which the applicant received the arbitral award.
The Inflexible Proviso: If the Court is satisfied that the applicant was prevented by sufficient cause, it may entertain the application within a further period of **thirty days, but not thereafter**. The Supreme Court in *Union of India vs Popular Construction Co* held that Section 5 of the Limitation Act does not apply; a delay beyond 3 months plus 30 days **cannot be condoned under any circumstance**.

Answer to Question 8(c): Producer Companies under the Companies Act, 2013

1. Statutory Concept & Objectives (Section 378A to 378ZU):

A Producer Company is a hybrid corporate vehicle combining the democratic features of a cooperative society with the regulatory structure of a private limited company. Its objects must strictly relate to primary produce (agriculture, horticulture, animal husbandry, pisciculture) including production, harvesting, procurement, grading, pooling, marketing, and exporting of primary produce.

2. Formation & Incorporation Thresholds (Section 378C):

A Producer Company can be formed by:

- **Ten or more individuals**, each of them being a primary producer; or
- **Two or more producer institutions**; or
- A combination of ten or more individuals and producer institutions.

On incorporation, it is deemed to be a **Private Limited Company**, but the statutory restriction limiting membership to 200 does not apply. Its name must end with the words "Producer Company Limited".

3. Unique Democratic Voting Rules (Section 378D):

Section 378D explicitly overrides standard corporate voting rights (which are proportionate to share capital):

1. **Individual Members:** In a Producer Company consisting solely of individual members, the voting rights shall be based on **one member, one vote**, irrespective of the number of shares held by him.
2. **Producer Institutions:** Where membership consists of producer institutions, voting rights are determined on the basis of their **participation in the business** of the company during the preceding year.
3. **Combination:** In a combined membership of individuals and institutions, voting rights shall be based on a single vote for every member.

--- END OF MOCK TEST 1 (FULL QUESTION PAPER & UNABRIDGED SUGGESTED ANSWERS) ---

ICMAI PAPER 13

CORPORATE AND ECONOMIC LAWS

PART 8: EXAM SIMULATIONS & ADVANCED PROBLEM SOLVER

MOCK TEST PAPER - 2 (Full 100 Marks)
High-Difficulty Expert Simulation with Complete ICMAI Suggested Answers

Target Examination: December 2026
Syllabus Framework: ICMAI 2022
Difficulty Level: Advanced / High-Difficulty Corporate & Cross-Border Focus

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MOCK TEST PAPER - 2: QUESTION PAPER

Time Allowed: 3 Hours | **Maximum Marks:** 100

General Instructions:

1. The figures in the margin on the right indicate full marks.
2. **Section A** is compulsory (15 Multiple Choice Questions x 2 Marks = 30 Marks).
3. In **Section B**, answer any **five** questions out of seven (Questions 2 to 8, 14 Marks each = 70 Marks).
4. State relevant sections, rules, regulations, and case laws clearly. Working notes form part of the answers.

SECTION A: MULTIPLE CHOICE QUESTIONS (Compulsory - 30 Marks)

1. Choose the most appropriate alternative for the following (15 x 2 = 30 Marks):

(i) Under Section 197(4) of the Companies Act, 2013, fees paid to a director for professional services rendered shall NOT be treated as managerial remuneration only if:

A) Approved by Special Resolution in General Meeting
B) The services are of a professional nature and the NRC/Board is satisfied that the director possesses requisite qualification
C) Central Government grants prior approval
D) The amount does not exceed ₹10 Lakhs per annum

(ii) Under the IBC, 2016, if multiple operational invoices from independent, project-wise contracts each have defaults below ₹1 Crore, but their aggregate total exceeds ₹1 Crore, can an Operational Creditor club them to file a Section 9 petition?

A) Yes, all debts owed to the same creditor can always be clubbed
B) No, distinct causes of action cannot be clubbed unless a consolidated running account ledger is maintained by mutual agreement
C) Yes, provided the corporate debtor is a private company
D) Yes, if approved by the Insolvency and Bankruptcy Board of India (IBBI)

(iii) Under Section 186(5) of the Companies Act, 2013, making an inter-corporate loan or investment within the statutory threshold limit requires the approval of:

A) Board of Directors by simple majority
B) Board of Directors by unanimous resolution of all directors present at the meeting
C) Shareholders by Ordinary Resolution
D) Nomination and Remuneration Committee

(iv) Under SEBI (PIT) Regulations, 2015, once a Trading Plan formulated by an insider is approved by the Compliance Officer, it is:

A) Revocable at any time before the first trade
B) Irrevocable and mandatorily required to be implemented without deviation
C) Valid only for 6 months
D) Executable even during financial results blackout periods

(v) Under FEMA (Overseas Investment) Rules, 2022, an Indian entity is prohibited from making an Overseas Direct Investment (ODI) in a foreign entity if that foreign entity has invested or invests in India through:

A) More than two layers of subsidiaries
B) Any holding company structure
C) A joint venture route
D) An unlisted holding entity

(vi) Under Section 212(6) of the Companies Act, 2013, an accused arrested by the SFIO for an offence under Section 447 can be granted bail ONLY IF:

A) He deposits 50% of the fraud amount in court
B) Public Prosecutor does not oppose, or Court is satisfied that there are reasonable grounds for believing he is NOT guilty and not likely to commit offence while on bail

C) The investigation has taken more than 90 days
D) The accused is an independent director

(vii) Under Section 53 of the IBC, 2016, where a Secured Creditor realizes its security interest outside the liquidation process under Section 52 and faces an unpaid shortfall, at which rank in the waterfall does the unpaid balance stand?

A) Rank 2 (Pari passu with workmen)
B) Rank 4 (Unsecured financial creditors)
C) Rank 5 (Pari passu with Central and State Government dues)
D) Rank 6 (Remaining debts)

(viii) Under the Competition Act, 2002, "Gun-Jumping" refers to:

A) Submitting bids for government tenders below cost
B) Consummating or giving effect to a combination before the expiry of the 210-day standstill period or prior to CCI approval
C) Abuse of dominant position by refusing supply
D) Participating in a leniency program without disclosing all documents

(ix) Under Section 31(j) of the SARFAESI Act, 2002, the Act shall cease to apply if the amount due from the borrower is:

A) Less than ₹10 Lakhs
B) Less than 20% of the principal amount and interest thereon
C) Paid up to 50%
D) Under litigation before a Civil Court

(x) Under Section 11 of the Arbitration and Conciliation Act, 1996, in an international commercial arbitration, if the parties fail to appoint an arbitrator according to agreed procedure, the appointment shall be made by the:

A) High Court
B) Supreme Court of India (or its designated arbitral institution)
C) Central Government Ministry of Law & Justice
D) International Court of Justice (ICJ)

(xi) Under SEBI (SAST) Regulations, 2011, what is the maximum permissible 'Creeping Acquisition' in a financial year without triggering an open offer for an acquirer holding 30% voting rights?

A) 2%
B) 5%
C) 10%
D) Creeping acquisition is not allowed above 25%

(xii) Under the Companies Act, 2013, what is the statutory cooling-off period during which a Managing Director whose agreement was terminated by NCLT under Section 242 (Oppression) CANNOT be re-appointed as director without NCLT leave?

A) 2 years
B) 3 years

C) 5 years
D) Lifetime debarment

(xiii) Under Section 14 of FEMA, 1999, if a person fails to pay an adjudicated monetary penalty exceeding ₹1 Crore within 90 days, he shall be liable to civil imprisonment for a term of up to:

A) 6 months
B) 1 year
C) 3 years
D) 7 years

(xiv) Under Section 24 of the Prevention of Money Laundering Act (PMLA), 2002, in any proceeding relating to proceeds of crime, the legal burden of proof lies on:

A) Enforcement Directorate
B) The Accused person to prove that proceeds of crime are untainted
C) Adjudicating Authority
D) Special Public Prosecutor

(xv) Under Section 233 of the Companies Act, 2013, a scheme of Fast Track Merger must be approved by creditors representing what percentage in value at their meeting?

A) 66% in value
B) 75% in value
C) 90% (nine-tenths) in value
D) Unanimous consent

SECTION B: DESCRIPTIVE QUESTIONS (Answer any 5 out of 7 - 70 Marks)

Question 2 [14 Marks]

(a) [8 Marks] Precision Tools Ltd, a public company, presents the following financial data for the financial year ended 31st March 2026:
- Net Profit as per Statement of Profit & Loss: ₹120 Crores

The following debits/credits were made in the P&L Account before arriving at the above Net Profit:
(i) Debited: Provision for Income Tax and Super-tax: ₹35 Crores
(ii) Debited: Depreciation as per Schedule II of Companies Act: ₹18 Crores (Depreciation as per Section 32 of Income Tax Act was ₹25 Crores)
(iii) Debited: Voluntary compensation paid to an injured worker: ₹2 Crores
(iv) Debited: Loss on sale of an undertaking (Capital nature): ₹8 Crores
(v) Credited: Profit on sale of factory land (Original cost ₹10 Cr, Sold for ₹25 Cr, WDV Nil): ₹25 Crores
(vi) Credited: Subsidy received from Central Government: ₹5 Crores
Compute the Net Profits for managerial remuneration strictly under Section 198 of the Companies Act, 2013. State the maximum remuneration payable to its Managing Director individually and to all Non-Executive Directors combined (the company has 1 MD and 4 Non-Executive Directors).

(b) [6 Marks] Titan Ltd, a public company, has Paid-up Capital of ₹80 Crores, Free Reserves of ₹40 Crores, and Securities Premium of ₹20 Crores. The company has existing long-term bank borrowings of ₹110 Crores and short-term trade credit / temporary bank overdrafts of ₹25 Crores. The Board of Directors proposes to borrow an additional long-term loan of ₹45 Crores from a consortium of banks by passing a resolution at a meeting of the Board. Evaluate whether the Board is legally competent to borrow this additional amount on its own under Section 180(1)(c) of the Companies Act, 2013.

Question 3 [14 Marks]

(a) [8 Marks] Nexus Infra Ltd entered into a commercial lease agreement with a private company, Nexus Logistics Pvt Ltd, for renting office space at ₹15 Lakhs per month (annual rent ₹1.8 Crores). Mr. R, a director of Nexus Infra Ltd, holds 28% of the paid-up share capital of Nexus Logistics Pvt Ltd. The turnover of Nexus Infra Ltd is ₹25 Crores. The transaction was approved at a Board meeting of Nexus Infra Ltd where Mr. R participated and voted in favor, contending that the rent charged was 10% below the prevailing market rent. The transaction was never placed before the shareholders. Analyze the legal violations committed under Section 184 and Section 188 of the Companies Act, 2013, and examine the validity of the contract under Section 188(3).

(b) [6 Marks] The Central Government assigned an investigation into the suspected corporate fraud of ₹500 Crores in Matrix Technologies Ltd to the Serious Fraud Investigation Office (SFIO) under Section 212 of the Companies Act, 2013. Simultaneously, the State Police Crime Branch registered an FIR against the promoters and arrested the Chief Financial Officer. The promoters challenge the police action before the High Court. Decide the jurisdiction of the State Police in light of Section 212(2) and Section 212(3).

Question 4 **[14 Marks]**

(a) [8 Marks] Real Estate Developers Ltd defaulted on a residential housing project comprising 800 allottees (homebuyers). 40 individual homebuyers jointly filed an application under Section 7 of the IBC, 2016 before the NCLT to initiate CIRP against the developer. The developer raised a preliminary objection that the petition is not maintainable as it does not meet the statutory threshold under the second proviso to Section 7(1). Decide the maintainability of the petition. If the developer had 350 allottees, what would be the minimum number of allottees required?

(b) [6 Marks] During the CIRP of a corporate debtor, an admitted financial creditor, ABC Bank, executed a settlement agreement with the suspended promoters. The original applicant filed an application before the NCLT for withdrawal of the CIRP under Section 12A of the IBC, 2016. In the CoC meeting convened to vote on the withdrawal, financial creditors holding 88% voting share voted in favor of withdrawal, while creditors holding 12% opposed it. Can the NCLT allow the withdrawal? Discuss the mandatory voting requirements under Section 12A.

Question 5 **[14 Marks]**

(a) [8 Marks] In the liquidation of Zenith Alloys Ltd under the IBC, 2016, the Liquidator realized ₹120 Crores from the sale of unencumbered liquidation estate assets. The claims admitted are:
- Liquidation process costs: ₹10 Crores
- Workmen’s dues for the period of 24 months preceding liquidation commencement: ₹30 Crores
- Debts owed to Secured Creditor A (who relinquished security interest to the estate): ₹60 Crores
- Debts owed to Secured Creditor B (who realized security interest outside liquidation under Sec 52 and suffered an unpaid deficit): ₹20 Crores
- Wages and salaries owed to non-workmen employees for 12 months: ₹15 Crores
- Unsecured Financial Creditors: ₹40 Crores
- Central and State Government tax dues: ₹15 Crores

Determine the exact distribution of proceeds to each class of claimants under the Section 53 Waterfall Mechanism. Clearly show the treatment of Secured Creditor B's unpaid deficit.

(b) [6 Marks] Explain the provisions governing 'Avoidance of Preferential Transactions' under Section 43 of the IBC, 2016. What is the statutory 'look-back period' for transactions entered into with related parties versus non-related parties? What transactions are statutorily exempted from being treated as preferential?

Question 6 [14 Marks]

(a) [8 Marks] Horizon Ltd, a listed company, has an annual consolidated turnover of ₹3,000 Crores as per its latest audited financial statements. The company proposes to enter into a brand royalty agreement with its holding company, Horizon Global Inc, for an annual payout of ₹350 Crores. The Audit Committee granted omnibus approval. A group of institutional investors objects that the transaction is a 'Material Related Party Transaction' and requires shareholder approval where the holding company cannot vote. Examine the legal position under Regulation 23 of SEBI (LODR) Regulations, 2015.

(b) [6 Marks] Acquirer Corp holds 26% voting rights in Target Ltd (a listed company). During FY 2025-26, Acquirer Corp acquired an additional 7% equity shares from the open market without making a public announcement of an open offer, contending that creeping acquisition up to 10% is permitted once the initial 25% threshold is crossed. Examine whether Acquirer Corp has violated SEBI (SAST) Regulations, 2011, and state the legal consequences.

Question 7 [14 Marks]

(a) [8 Marks] Bharat Forge Ltd, an Indian operating entity, has a Net Worth of ₹500 Crores as per its last audited balance sheet. It proposes to make an Overseas Direct Investment (ODI) in an operating company in Germany by subscribing to equity shares worth ₹1,200 Crores, granting a corporate loan of ₹400 Crores, and issuing a corporate guarantee of ₹600 Crores. Compute the total 'Financial Commitment' of Bharat Forge Ltd under the Foreign Exchange Management (Overseas Investment) Rules, 2022, and evaluate whether the proposed investment can be executed under the Automatic Route.

(b) [6 Marks] Mr. David, an Australian citizen residing in Sydney who visits India occasionally on tourist visas, wishes to purchase a commercial showroom in Connaught Place, New Delhi, and a 5-acre agricultural farm in Himachal Pradesh out of foreign inward remittances. Advise Mr. David regarding the permissibility of these acquisitions under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

Question 8 [14 Marks]

Write comprehensive, analytical notes on any TWO of the following (7 Marks each):
(a) The legal test for determining "Appreciable Adverse Effect on Competition" (AAEC) under Section 19(3) of the Competition Act, 2002, and the significance of the statutory Leniency Programme under Section 46.
(b) The restrictions on enforcement of security interest under Section 31 of the SARFAESI Act, 2002, and the mandatory pre-deposit requirements under Section 18 for filing an appeal before the DRAT.
(c) The statutory scope of "Public Policy of India" as an exclusive ground for setting aside an domestic arbitral award under Section 34 and refusing enforcement of a foreign arbitral award under Section 48 of the Arbitration and Conciliation Act, 1996.

SUGGESTED ANSWERS: MOCK TEST 2

SECTION A: MULTIPLE CHOICE QUESTIONS

Q. No.	Correct Option	Statutory Reference & Detailed Justification
(i)	**B) Services of professional nature & NRC/Board satisfied**	Section 197(4) explicitly provides that remuneration for services rendered in any other capacity shall not be included in managerial remuneration if: (a) the services rendered are of a professional nature; and (b) in the opinion of the Nomination and Remuneration Committee (or Board), the director possesses the requisite qualification for practice.
(ii)	**B) No, distinct causes cannot be clubbed unless running account exists**	As settled by the NCLAT in multiple landmark rulings, independent project work orders having separate dispute mechanics and ledgers cannot be artificially bundled together to cross the ₹1 Crore threshold under Section 4 of IBC unless there is an agreement for a single running account.
(iii)	**B) Unanimous resolution of all directors present**	Section 186(5) mandates that no loan or investment shall be made unless the resolution is passed at a meeting of the Board with the **consent of all the directors present at the meeting** (Unanimous Board Resolution), even when the amount is within the 60%/100% threshold.
(iv)	**B) Irrevocable & mandatorily implemented**	Regulation 5(4) of SEBI (PIT) Regulations, 2015 provides that a Trading Plan, once approved by the Compliance Officer, shall be **irrevocable** and the insider shall mandatorily implement it without deviation or cancellation due to adverse market fluctuations.
(v)	**A) More than two layers of subsidiaries**	Rule 19(3) of the FEMA (Overseas Investment) Rules, 2022 restricts round-tripping. No Indian entity shall make financial commitment in a foreign entity that has invested or invests into India through a structure exceeding **two layers of subsidiaries**.
(vi)	**B) Twin bail conditions under Sec 212(6)**	Section 212(6) of the Companies Act, 2013 sets strict twin bail conditions for Section 447 fraud offences: Public Prosecutor must be given opportunity to oppose, and Court must be satisfied that reasonable grounds exist believing the accused is not guilty and not likely to commit offence.
(vii)	**C) Rank 5 (Pari passu with Govt dues)**	Under Section 53(1)(e)(ii) of the IBC, where a secured creditor enforces security interest outside liquidation under Section 52, any unpaid balance of debt loses its secured priority (Rank 2) and drops down to **Rank 5**, ranking pari passu with 2 years of government taxes.
(viii)	**B) Consummating combination before 210 days / approval**	Under Section 6(2A) and Section 43A of the Competition Act, 2002, 'Gun-Jumping' occurs when merging enterprises give effect to an M&A transaction (e.g., integrating operations or sharing

		sensitive pricing data) prior to approval by the CCI or before the 210-day standstill period expires.
(ix)	**B) Less than 20% of principal and interest**	Section 31(j) of the SARFAESI Act, 2002 explicitly exempts cases where the amount due is **less than 20% of the principal amount and interest thereon**, ensuring lenders cannot summarily foreclose assets when over 80% of the loan has already been repaid.
(x)	**B) Supreme Court of India**	Under Section 11(6) read with Section 11(9) of the Arbitration and Conciliation Act, 1996, in an international commercial arbitration where parties fail to appoint an arbitrator, the appointment power is vested exclusively in the **Supreme Court of India** (or designated institution).
(xi)	**B) 5%**	Regulation 3(2) of SEBI (SAST) Regulations, 2011 allows an acquirer holding between 25% and 75% voting rights to acquire up to **5% of voting rights in a single financial year** (Creeping Acquisition). Any acquisition exceeding 5% triggers a mandatory open offer.
(xii)	**C) 5 years**	Under Section 243(1)(b) of the Companies Act, 2013, a director whose agreement was terminated or set aside by the Tribunal under Section 242 shall not, for a period of **five years** from the date of the order, be appointed or act as director without leave of the Tribunal.
(xiii)	**C) 3 years**	Section 14(1) of FEMA, 1999 prescribes that where a person fails to pay an adjudicated penalty, he is liable to civil imprisonment for up to **3 years** if the default exceeds ₹1 Crore (and up to 6 months in any other case).
(xiv)	**B) The Accused person**	Section 24 of PMLA, 2002 explicitly shifts the burden of proof. When a person is charged with the offence of money-laundering, the statutory legal presumption operates, and the **burden of proving that proceeds of crime are untainted property lies on the accused**.
(xv)	**C) 90% (nine-tenths) in value**	Section 233(1)(d) of the Companies Act, 2013 requires that for a Fast Track Merger scheme to be approved, it must be consented to by creditors representing **nine-tenths (90%) in value** of the creditors or class of creditors.

SECTION B: DESCRIPTIVE QUESTIONS

Answer to Question 2(a): Net Profit Computation u/s 198 & Managerial Remuneration

1. Legal Provisions Governing Section 198:

Section 198 of the Companies Act, 2013 lays down statutory rules for computing net profits to determine managerial remuneration under Section 197.
- *Inadmissible Debits (to be added back):* Provision for Income Tax and Super-tax (Sec 198(4)(a)); Losses of a capital nature (Sec 198(4)(l)). Voluntary compensation is allowable if incurred for business.
- *Depreciation:* Must be deducted as per Schedule II (Companies Act), NOT as per Income Tax Act (Sec 198(4)(k)).
- *Capital Profits (to be excluded/deducted):* Profit on sale of immovable property/capital assets of a capital nature is NOT credited, except to the extent of the excess of sale price over WDV (up to original cost) (Sec 198(3)(a)). Capital gains above original cost are completely excluded.
- *Subsidies:* Government subsidies are credit-eligible revenue receipts (Sec 198(2)).

2. Step-by-Step Computation of Net Profit u/s 198:

Particulars	Statutory Treatment	Amount (₹ in Crores)
Net Profit as per Statement of Profit and Loss	Starting base	**120.00**
Add: Provision for Income Tax and Super-tax	Added back u/s 198(4)(a)	35.00
Add: Loss on sale of undertaking	Capital loss added back u/s 198(4)(l)	8.00
Add: Voluntary compensation to worker	Permitted business expense (No adjustment)	0.00
Add: Depreciation adjustment	Schedule II depr (₹18 Cr) already correctly debited	0.00
Sub-total (A)		**163.00**
Less: Profit on sale of factory land of capital nature	Exempt capital profit deducted u/s 198(3)(a)	(25.00)
Less: Government Subsidy	Permissible credit u/s 198(2) (No adjustment)	0.00
Total Deductions (B)		**(25.00)**
Net Profit for Managerial Remuneration u/s 198 (A - B)		**₹138.00 Crores**

3. Computation of Maximum Permissible Remuneration (Section 197(1)):

- **Managing Director (Individual Limit):** Under Section 197(1)(i), if there is only one Managing Director, remuneration cannot exceed **5% of Net Profits**.
  Max Remuneration to MD = 5% of ₹138 Crores = **₹6.90 Crores per annum**.
- **Non-Executive Directors (Combined Limit):** Under Section 197(1)(ii)(A), where the company has a Managing Director, the remuneration payable to all directors who are neither MD nor WTD shall not exceed **1% of Net Profits**.
  Max Remuneration to all 4 Non-Executive Directors combined = 1% of ₹138 Crores = **₹1.38 Crores per annum**.

Answer to Question 2(b): Borrowing Restrictions under Section 180(1)(c)

1. Statutory Provisions (Section 180(1)(c)):

Section 180(1)(c) of the Companies Act, 2013 mandates that the Board of Directors of a public company shall exercise the power to borrow money **only with the consent of the company by a Special Resolution**, where the money to be borrowed, together with the money already borrowed by the company, will exceed the aggregate of its **Paid-up Share Capital, Free Reserves, and Securities Premium**.
Statutory Exclusion: Temporary loans obtained from the company's bankers in the ordinary course of business (e.g., cash credits, overdrafts, discounting of bills payable within 6 months) are explicitly **excluded** from aggregate borrowings.

2. Analysis of Financial Data of Titan Ltd:

- **Aggregate Base:** Paid-up Capital (₹80 Cr) + Free Reserves (₹40 Cr) + Securities Premium (₹20 Cr) = **₹140 Crores**.
- **Existing Eligible Borrowings:** Long-term bank borrowings = **₹110 Crores**. *(The temporary bank overdrafts / trade credits of ₹25 Crores are excluded under the Explanation).*
- **Proposed Borrowing:** ₹45 Crores.
- **Total Borrowings after Proposed Loan:** ₹110 Cr + ₹45 Cr = **₹155 Crores**.

3. Conclusion:

The total borrowing (₹155 Crores) exceeds the aggregate base of Paid-up Capital, Free Reserves, and Securities Premium (₹140 Crores) by ₹15 Crores. Therefore, the Board of Directors is **NOT legally competent to borrow the additional ₹45 Crores on its own authority** at a Board meeting. Titan Ltd must convene a general meeting and obtain prior shareholder approval by passing a **Special Resolution** before executing the loan agreement.

Answer to Question 3(a): Violations of Related Party Transactions (Sec 184 & 188)

1. Non-Disclosure of Director's Interest (Section 184):

Under Section 184(2), every director who is in any way concerned or interested in a contract or arrangement entered into with a body corporate in which such director holds **more than 2% shareholding**, must disclose his interest at the Board meeting and **shall not participate or vote** in the meeting on such resolution.
Violation: Mr. R holds 28% shares in Nexus Logistics Pvt Ltd (>2%). By participating in the discussion and voting on the resolution, Mr. R committed an explicit statutory breach of Section 184(2). Under Section 167(1)(c) and (d), Mr. R’s office as director stands **vacated automatically**, and he is liable to monetary penalties.

2. Breach of Related Party Approval Thresholds (Section 188):

Under Section 188(1)(c) read with Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, entering into a lease of property with a related party where the annual transaction value amounts to **10% or more of the turnover** requires prior approval by an **Ordinary Resolution** in general meeting.
- Turnover of Nexus Infra Ltd = ₹25 Crores. 10% threshold = **₹2.50 Crores**.
- Annual rent = ₹1.80 Crores. Although below 10% of turnover (requiring only Board approval), the Board approval was vitiated because Mr. R's interested vote was illegal.
- *Defense of Arm's Length:* The contention that rent was 10% below market does NOT constitute an "Arm's Length" transaction. As per Explanation (b) to Section 188(1), arm's length means a transaction between two unrelated parties acting independently. Giving a subsidized or below-market rent to a company where a director holds 28% is not an arm's length transaction.

3. Consequences under Section 188(3) (Voidability & Indemnity):

Under Section 188(3), where any contract is entered into by a director without obtaining proper approval and is not ratified by the shareholders within **three months** from the date of the contract, such contract shall be **voidable at the option of the Board**. Furthermore, because the contract was entered into with a company in which a director was interested, Mr. R shall be bound to **indemnify the company against any loss incurred by it**.

Answer to Question 3(b): Exclusive Jurisdiction of SFIO over Corporate Fraud (Sec 212)

1. Statutory Exclusivity of SFIO (Section 212(2)):

Section 212(2) of the Companies Act, 2013 provides an explicit statutory bar: *"Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act,* ***no other investigating agency of Central Government or any State Government shall proceed with investigation*** *in such case in respect of any offence under this Act."*

2. Transfer of Records to SFIO (Section 212(3)):

Section 212(3) mandates that where a case has been assigned to the SFIO, all other agencies shall halt their ongoing investigations and shall immediately **transfer all relevant documents and records** in their possession relating to the case to the SFIO.

3. Conclusion & Judicial Determination:

The challenge by the promoters will succeed before the High Court. Once the Central Government formally assigned the corporate fraud investigation of Matrix Technologies Ltd to the SFIO, the State Police Crime Branch was **statutorily divested of its jurisdiction** over the matter. The State Police cannot register a parallel FIR, conduct an independent probe, or arrest executives. The High Court will quash the police proceedings and direct the Crime Branch to transfer the case diary, evidence, and custody of the CFO to the SFIO.

Answer to Question 4(a): Maintainability of CIRP Petition by Homebuyers (Sec 7 Threshold)

1. Statutory Threshold for Real Estate Allottees:

Under the second proviso to Section 7(1) of the IBC, 2016 (inserted by the IBC Amendment Act, 2020), an application for initiating CIRP against a real estate developer by financial creditors who are allottees under a real estate project shall be filed **jointly by not less than one hundred (100) of such allottees** under the same real estate project, OR **not less than ten percent (10%) of the total number of such allottees** under the same project, **whichever is less**.

2. Evaluation of Scenario 1 (800 Allottees):

- Total allottees = 800.
- 10% of total allottees = 10% of 800 = **80 allottees**.
- Absolute statutory cap = **100 allottees**.
- Statutory threshold = Lower of 80 or 100 = **80 allottees**.
- Actual applicants = **40 allottees**.

Conclusion: The petition filed by 40 homebuyers is **NOT maintainable**. Since 40 is less than the required minimum threshold of 80 allottees, the NCLT will dismiss the application in limine for lack of statutory locus standi.

3. Evaluation of Scenario 2 (350 Allottees):

- Total allottees = 350.
- 10% of 350 = **35 allottees**.
- Absolute cap = 100 allottees.
- Statutory threshold = Lower of 35 or 100 = **35 allottees**.

Conclusion: If the project had 350 allottees, the minimum number required to file a maintainable petition would be **35 allottees**. (In that scenario, a petition by 40 allottees would be fully maintainable: 40 ≥ 35).

Answer to Question 4(b): Voting Threshold for Section 12A Withdrawal under IBC

1. Legal Provision (Section 12A of IBC, 2016):

Section 12A of the Insolvency and Bankruptcy Code, 2016, read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, explicitly provides that the Adjudicating Authority may allow the withdrawal of an application admitted under Section 7, Section 9, or Section 10, on an application made by the applicant with the approval of **ninety percent (90%) voting share of the Committee of Creditors (CoC)**.

2. Strict Construction of Super-Majority:

The Supreme Court in *Swiss Ribbons Pvt Ltd vs Union of India* and *Brilliant Alloys Pvt Ltd* upheld the constitutional validity of the 90% voting requirement. Once an insolvency petition is admitted, it becomes a collective proceeding in rem (for the entire body of creditors), and the individual applicant cannot unilaterally settle with the debtor. Reversing an admitted CIRP demands an overwhelming consensus of the financial creditors representing at least 90% of the voting share.

3. Analysis & Conclusion:

In the CoC meeting, financial creditors holding 88% voting share voted in favor of withdrawal, while 12% opposed. Because 88% is strictly less than the statutory requirement of **90%**, the threshold has not been met. The NCLT **cannot allow the withdrawal**. The Section 12A application will be rejected, and the Resolution Professional must continue the CIRP proceedings.

Answer to Question 5(a): Waterfall Distribution & Treatment of Deficit (Sec 53)

1. Statutory Rules for Distribution under Section 53:

- **Rank 1 (Sec 53(1)(a)):** CIRP costs and liquidation process costs paid in full.
- **Rank 2 (Sec 53(1)(b)):** Workmen's dues (for 24 months) and debts owed to secured creditors who have **relinquished** security interest under Section 52, ranking *pari passu*.
- **Rank 3 (Sec 53(1)(c)):** Wages and unpaid dues to non-workmen employees for 12 months.
- **Rank 4 (Sec 53(1)(d)):** Financial debts owed to unsecured creditors.
- **Rank 5 (Sec 53(1)(e)):** Central/State Govt dues (for 2 years) AND debts owed to a secured creditor for any unpaid balance following enforcement of security interest outside liquidation (Sec 53(1)(e)(ii)), ranking *pari passu*.

2. Distribution of ₹120 Crores Proceeds:

Rank / Category	Claim (₹ Cr)	Distribution (₹ Cr)	Balance Available (₹ Cr)
Total Liquidation Proceeds Available			**120.00**
Rank 1: Liquidation Process Costs	10.00	**10.00** (Paid in full)	110.00
Rank 2 (Pari Passu): Workmen Dues (₹30 Cr) & Secured Creditor A (Relinquished: ₹60 Cr)	90.00 (30 + 60)	**90.00** (Paid in full)	20.00
Rank 3: Non-workmen Employee Wages (12m)	15.00	**15.00** (Paid in full)	5.00
Rank 4: Unsecured Financial Creditors	40.00	**5.00** (Partially paid)	**0.00 (NIL)**
Rank 5: Govt Dues (₹15 Cr) & Secured Creditor B Deficit (₹20 Cr)	35.00	**0.00** (NIL)	0.00

3. Treatment of Secured Creditor B's Unpaid Deficit of ₹20 Crores:

Secured Creditor B chose to enforce its security interest outside the liquidation estate under Section 52. Consequently, under Section 53(1)(e)(ii), its unpaid shortfall of ₹20 Crores **loses its secured priority status under Rank 2 and drops down to Rank 5**, ranking pari passu with Government taxes. Because the liquidation funds were exhausted at Rank 4 (Unsecured Financial Creditors), **Secured Creditor B receives NIL** from the liquidation estate for its remaining ₹20 Crore deficit.

Answer to Question 5(b): Avoidance of Preferential Transactions (Sec 43)

1. Essential Ingredients of a Preferential Transaction (Section 43(2)):

A corporate debtor shall be deemed to have given a preference if:
(a) There is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor, surety, or guarantor, on account of an **antecedent (pre-existing) financial debt or operational debt**; and
(b) The transfer has the effect of putting such creditor in a **more beneficial position** than it would have been in the event of distribution of assets under the Section 53 waterfall.

2. Statutory Look-Back Period (Section 43(4)):

- **Related Parties:** The preference must be given during the period of **two years** preceding the insolvency commencement date.
- **Unrelated Parties:** The preference must be given during the period of **one year** preceding the insolvency commencement date.

3. Statutory Safe Harbors (Transactions NOT treated as Preferential - Sec 43(3)):

A preference shall not include:
1. Transfer made in the **ordinary course of the business or financial affairs** of the corporate debtor or the transferee.
2. Any transfer creating a security interest in property acquired by the corporate debtor to the extent that such security interest secures **new value** and was registered within prescribed time.

Answer to Question 6(a): Material Related Party Transactions under SEBI (LODR)

1. Materiality Thresholds under Regulation 23(1):

Under Regulation 23(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds **₹1,000 Crores OR 10% of the annual consolidated turnover** of the listed entity as per the last audited financial statements, **whichever is lower**.
Specific Rule for Brand Royalty: Regulation 23(1A) specifies that a transaction involving payments made to a related party with respect to **brand usage or royalty** shall be considered material if the transaction(s) exceed **5% of the annual consolidated turnover** of the listed entity.

2. Analysis of Facts:

- Consolidated Turnover of Horizon Ltd = ₹3,000 Crores.
- Royalty threshold (5% of ₹3,000 Cr) = **₹150 Crores**. (Standard RPT threshold is lower of ₹1000 Cr or 10% of ₹3000 Cr = ₹300 Cr).
- Proposed brand royalty payout = **₹350 Crores**.
- The payout of ₹350 Crores exceeds both the 5% brand royalty threshold (₹150 Cr) and the general materiality limit (₹300 Cr).

3. Conclusion:

The transaction is a **Material Related Party Transaction**. An omnibus approval by the Audit Committee is legally insufficient. Under Regulation 23(4), prior approval of the shareholders through a resolution is mandatory. Furthermore, **no related party (including the holding company, Horizon Global Inc) shall vote to approve such resolution**, whether the entity is a party to the particular transaction or not. The institutional investors' objection is fully valid.

Answer to Question 6(b): Creeping Acquisition Violations under SEBI (SAST)

1. Creeping Acquisition Ceiling (Regulation 3(2)):

Regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 governs creeping acquisitions: an acquirer who, together with persons acting in concert (PAC), holds shares or voting rights entitling them to exercise 25% or more, but less than the maximum permissible non-public shareholding (75%), can acquire additional voting rights up to **not more than 5% in any financial year** without triggering an open offer.

2. Analysis of Violation:

Acquirer Corp already held 26% voting rights. During FY 2025-26, it acquired an additional 7% shares. The contention that up to 10% is permitted is factually incorrect under Indian takeover jurisprudence (the statutory limit is strictly 5% per financial year). The acquisition of 7% exceeds the 5% safe harbor limit by 2%.

3. Statutory Consequences & Penalties:

- Acquirer Corp was obligated to make a public announcement of a **mandatory Open Offer to acquire at least 26%** of total shares of Target Ltd from the public under Regulation 7.
- Failing to do so constitutes a direct breach of Regulation 3(2). SEBI can initiate adjudication proceedings under Section 15H of the SEBI Act (penalty up to **₹25 Crores or three times the amount of profits made**, whichever is higher).
- Under Section 11B, SEBI can issue directions restraining Acquirer Corp from accessing the capital market, direct them to disinvest the excess 2% shares, and order transfer of voting rights/ dividends to the Investor Protection and Education Fund (IPEF).

Answer to Question 7(a): Computation of ODI Financial Commitment (FEMA Rules, 2022)

1. Legal Provision (Rule 2(f) & Rule 12 of OI Rules, 2022):

Under the Foreign Exchange Management (Overseas Investment) Rules, 2022, an Indian entity can make an Overseas Direct Investment under the **Automatic Route** if the total **Financial Commitment (FC)** in all foreign entities taken together does not exceed **400% of its Net Worth** as per the last audited balance sheet.
Components of Financial Commitment:
- 100% of equity share capital / capital contribution.
- 100% of debt / loans granted to the foreign entity.
- 100% of corporate guarantees issued on behalf of the foreign entity.
- 50% of performance guarantees issued on behalf of the foreign entity.
- 100% of pledge/charge created on assets.

2. Computation of Financial Commitment of Bharat Forge Ltd:

Component of Investment	Basis of Calculation	Amount (₹ in Crores)
Subscription to Equity Shares	100% of equity commitment	1,200.00
Corporate Loan to German Company	100% of loan commitment	400.00
Corporate Guarantee issued	100% of corporate guarantee value	600.00
Total Financial Commitment Proposed		**₹2,200.00 Crores**

3. Evaluation of Automatic Route Limit:

- Net Worth of Bharat Forge Ltd = ₹500 Crores.
- Maximum permissible Financial Commitment under Automatic Route = 400% of ₹500 Crores = **₹2,000 Crores**.
- Proposed Financial Commitment = **₹2,200 Crores**.

Conclusion: The proposed financial commitment of ₹2,200 Crores exceeds the 400% Net Worth ceiling (₹2,000 Crores) by ₹200 Crores. Therefore, the investment **CANNOT be executed under the Automatic Route**. Bharat Forge Ltd must file an application through its Authorized Dealer Category-I bank to obtain prior approval from the **Reserve Bank of India (Approval Route)** for the excess commitment of ₹200 Crores.

Answer to Question 7(b): Acquisition of Immovable Property by Foreign Nationals

1. Legal Provision (NDI Rules, 2019):

Under Rule 3 and Rule 4 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, the acquisition of immovable property in India is governed by the citizenship and residential status of the buyer under FEMA:

- **Foreign Nationals of Non-Indian Origin:** A person who is a citizen of a foreign country (other than an OCI) and is resident outside India is **strictly prohibited from acquiring any immovable property in India**, whether residential or commercial.
  Sole Exception: He may acquire immovable property by way of a **lease not exceeding five years**.
- **Agricultural Land Prohibition:** Even Non-Resident Indians (NRIs) and Overseas Citizens of India (OCIs) are statutorily prohibited from purchasing agricultural land, farm houses, or plantation properties in India.

2. Analysis of Mr. David's Proposals:

1. **Commercial Showroom in Delhi:** Mr. David is an Australian citizen residing in Sydney (a foreign national of non-Indian origin residing outside India). Despite remitting funds through legal banking channels, he has **no legal authority to purchase** the commercial showroom in Delhi. He can only acquire it on lease for up to 5 years.
2. **Agricultural Farm in Himachal Pradesh:** Completely prohibited. Agricultural land cannot be purchased by any foreign national or even by NRIs/OCIs.

Conclusion: Both proposed acquisitions are **illegal and prohibited under FEMA**. Registering these properties will constitute an offence under Section 13, rendering the properties liable to confiscation by the Enforcement Directorate under Section 13(2).

Answer to Question 8(a): AAEC Factors & Cartel Leniency under Competition Act

1. Factors for Determining AAEC (Section 19(3)):

While determining whether an agreement causes an Appreciable Adverse Effect on Competition, the CCI evaluates six statutory factors:
- *Negative Factors:* (a) Creation of barriers to new entrants in the market; (b) Driving existing competitors out of the market; (c) Foreclosure of competition by hindering entry.
- *Positive / Pro-Competitive Factors:* (d) Accrual of benefits to consumers; (e) Improvements in production or distribution of goods or provision of services; (f) Promotion of technical, scientific, and economic development.

2. Leniency Programme for Cartels (Section 46):

Cartels operate in secrecy and are difficult to prove. Section 46 provides a statutory "Leniency Programme" (Lesser Penalty Regulations) to encourage whistleblowers. The CCI may grant a reduction in penalty up to **100%** to the first member of a cartel who makes a vital disclosure before the Director General submits an investigation report. Subsequent applicants can receive up to 50% or 30% penalty reductions. The 2023 amendment also introduced **"Leniency Plus"**, allowing an enterprise disclosing a second, separate cartel to receive additional leniency in the first cartel.

Answer to Question 8(b): SARFAESI Restrictions & DRAT Pre-Deposit Rules

1. Restrictions on Enforcement (Section 31):

Section 31 lists scenarios where the SARFAESI Act cannot be invoked: (i) Any security interest created in agricultural land; (ii) Any case where the amount due is less than 20% of the principal amount and interest thereon; (iii) Claims where the financial debt and interest is less than ₹1 Lakh; (iv) A lien on goods or security under the Contract Act; (v) Rights of an unpaid seller under the Sale of Goods Act.

2. Mandatory Pre-Deposit for DRAT Appeals (Section 18):

Any person aggrieved by an order of the DRT may file an appeal before the Debts Recovery Appellate Tribunal (DRAT) within 30 days. However, under the second proviso to Section 18(1), no appeal shall be entertained by the DRAT unless the borrower deposits **fifty percent (50%) of the amount of debt due** from him as determined by the DRT or claimed by the secured creditor, whichever is less. The DRAT has the discretion, for reasons to be recorded in writing, to reduce the pre-deposit to **not less than twenty-five percent (25%)** of the debt. The pre-deposit is a mandatory jurisdictional condition; the DRAT cannot grant a complete waiver.

Answer to Question 8(c): Public Policy of India under Arbitration Act (Sec 34 & Sec 48)

1. Scope of "Public Policy of India":

Under Section 34(2)(b)(ii) (setting aside domestic awards) and Section 48(2)(b) (refusing enforcement of foreign awards), an award can be challenged if it conflicts with the Public Policy of India. Explanation 1 clarifies that an award conflicts with public policy ONLY IF:
(i) The making of the award was induced or affected by **fraud or corruption**, or was in violation of Section 75 or Section 81;
(ii) It is in contravention with the **fundamental policy of Indian law**; or
(iii) It is in conflict with the **basic notions of morality or justice**.

2. Fundamental Policy of Indian Law & Judicial Restraint:

In *Associate Builders* and *Ssangyong Engineering*, the Supreme Court ruled that 'fundamental policy of Indian law' covers core legal values that cannot be compromised (e.g., natural justice, compliance with binding binding parent statutes like FEMA). However, Section 34(2A) strictly bars a review of the merits: an arbitral award shall **not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence**. The public policy exception cannot be used as a backdoor for an appeal on facts.

--- END OF MOCK TEST 2 (HIGH-DIFFICULTY EXPERT QUESTION PAPER & COMPLETE SUGGESTED ANSWERS) ---

ICMAI PAPER 13

CORPORATE AND ECONOMIC LAWS

PART 8: EXAM SIMULATIONS & MASTER CASE SOLVER

MOCK TEST PAPER - 3 (Full 100 Marks)
Master-Level Case Study Simulation + Comprehensive Unabridged Suggested Answers

Target Examination: December 2026
Syllabus Framework: ICMAI 2022
Difficulty Calibration: Ultra-Advanced / Complex Cross-Statute Case Scenarios

cmaknowledge.in

MOCK TEST PAPER - 3: QUESTION PAPER

Time Allowed: 3 Hours | **Maximum Marks:** 100

General Instructions:

1. The figures in the margin on the right indicate full marks.
2. **Section A** is compulsory (15 Scenario-based MCQs x 2 Marks = 30 Marks).
3. In **Section B**, answer any **five** questions out of seven (Questions 2 to 8, 14 Marks each = 70 Marks).
4. Answers must follow the strict ICMAI 3-Tier Pattern: *Statutory Provision → Legal Analysis & Fact Application → Definitive Conclusion*.

SECTION A: COMPLEX SCENARIO MCQs (Compulsory - 30 Marks)

1. Choose the most appropriate alternative for each scenario (15 x 2 = 30 Marks):

(i) A listed public company has a Board comprising 10 directors. An urgent matter regarding a multi-jurisdictional takeover is to be transacted. At the Board meeting called at 24 hours' notice, 2 Independent Directors and 4 Executive Directors attend. One Independent Director leaves before the vote. The resolution is passed by the remaining 5 directors (including 1 ID). Is the resolution valid?

A) Invalid, because at least 2 Independent Directors must be present throughout the meeting
B) Valid, because at least one Independent Director was present at the time the decision was taken
C) Invalid, because a Board meeting can never be called on 24 hours' notice
D) Incomplete, requiring subsequent ratification by the Central Government

(ii) Under the IBC, 2016, Corporate Debtor 'X' entered into an agreement with its related entity 'Y' 22 months prior to the insolvency commencement date, whereby an unencumbered factory worth ₹50 Crores was transferred to 'Y' for ₹12 Crores. Under which section and look-back window can the Resolution Professional challenge this?

A) Preferential Transaction u/s 43 with 1-year look-back
B) Undervalued Transaction u/s 45 with 2-year look-back for related parties
C) Extortionate Credit Transaction u/s 50 with 3-year look-back
D) Winding up fraudulent preference under Section 328 of Companies Act only

(iii) In a CIRP under IBC, an operational creditor files an application alleging default of ₹1.10 Crores. The Corporate Debtor demonstrates that it had issued a legal notice under Section 138 of the Negotiable Instruments Act against the operational creditor for a bounced security cheque 1 month prior to the Section 8 Demand Notice. How should the Adjudicating Authority rule?

A) Admit the petition since Section 138 is a criminal matter and cannot constitute a commercial pre-existing dispute
B) Reject the petition under Section 9(5)(ii)(d) as the prior legal proceedings establish a genuine pre-existing dispute between the parties
C) Direct the Corporate Debtor to deposit 50% in an escrow account
D) Convert the proceeding into a Fast Track CIRP

(iv) A foreign institutional investor holding 24.5% voting rights in an Indian listed target company acquires warrants convertible into 4% equity shares. The warrants are yet to be converted. Does the mere acquisition of convertible warrants trigger a mandatory Open Offer under SEBI (SAST) Regulations, 2011?

A) No, open offer triggers only upon actual conversion into equity shares
B) Yes, because under Regulation 3(1), entitlement to exercise voting rights beyond 25% includes shares or voting rights upon conversion
C) No, because warrants carry no voting rights until exercised
D) Yes, but only if the acquirer takes over Board management

(v) An Indian listed company signs an exclusive agreement with an overseas software vendor where the annual payout is ₹400 Crores. The company's annual consolidated turnover is ₹9,000 Crores. The contract is executed without shareholder approval, relying on an Audit Committee omnibus approval. A shareholder challenges this under LODR. Decide:

A) Valid, because ₹400 Crores is less than ₹1,000 Crores and less than 10% of consolidated turnover (₹900 Cr)
B) Invalid, because all international software agreements require unanimous shareholder consent
C) Invalid, because material RPT threshold is fixed at ₹100 Crores for IT services
D) Valid, provided the Ministry of Corporate Affairs grants a post-facto exemption

(vi) Under FEMA, an Indian company raises an ECB of USD 40 Million under the automatic route with a maturity period of 4 years. The company utilizes the entire proceeds to refinance an existing Rupee-denominated domestic working capital loan taken from an Indian commercial bank. Is this end-use permissible?

A) Permissible, because all domestic loans can be refinanced under ECB automatic route
B) Impermissible, because refinancing domestic Rupee working capital loans requires a Minimum Average Maturity Period (MAMP) of 7 or 10 years
C) Permissible, provided the lender is an FATF-compliant multilateral institution
D) Impermissible, because ECB proceeds can never be used for working capital under any circumstance

(vii) Under Section 241/244 of the Companies Act, 2013, an oppression petition is filed by 95 members of a company having 1,200 members. The petitioners hold 8% of the issued share capital. They concurrently apply for a waiver of requirements under the proviso to Section 244(1). What is the legal position regarding NCLT's jurisdiction?

A) The NCLT has no jurisdiction because 100 members or 10% capital is mandatory with zero exceptions
B) The petition is maintainable directly without waiver
C) The NCLT has full discretionary statutory jurisdiction under the proviso to waive the numerical/capital requirements and hear the petition on merits
D) The waiver can be granted only by the Central Government, not by the NCLT

(viii) In a liquidation under Section 53 of the IBC, 2016, the State Tax Department claims that its statutory sales tax dues of ₹15 Crores rank pari passu with Secured Creditors based on a 'first charge' clause in the State VAT Act. Following recent Supreme Court clarifications reviewing the *Rainbow Papers* doctrine:

A) State Government dues always rank Rank 1 above liquidation costs
B) Government dues are governed strictly by Section 53(1)(e) (Rank 5) unless a security interest is validly registered under the IBC/Companies Act framework
C) State Tax dues are completely extinguished in liquidation without any distribution
D) The Liquidator must refer the matter to the High Court under Article 226

(ix) Under the Competition Act, 2002, three enterprise groups holding 80% market share enter into an arrangement to settle an ongoing anti-competitive investigation regarding price-fixing. Under the Competition (Amendment) Act framework, can an inquiry into a Cartel be settled through the 'Commitments and Settlement' mechanism?

A) Yes, all anti-competitive matters can be settled with the CCI
B) No, the Settlement and Commitment mechanism explicitly excludes Cartels from its scope
C) Yes, provided the penalty is paid at double the statutory rate
D) Yes, if approved by the NCLAT

(x) A bank issues a 60-day notice under Section 13(2) of SARFAESI. The borrower submits a detailed written objection within 45 days pointing out discrepancies in the NPA classification. The bank ignores the objection and takes symbolic possession on the 61st day. What is the legal status of the bank's action?

A) Valid, because the bank is not bound to respond to borrower objections
B) Void ab initio, because Section 13(3A) mandates that the secured creditor must consider the objection and communicate its non-acceptance within 15 days before taking possession
C) Valid, provided the loan default exceeds ₹1 Crore
D) Voidable only if the borrower deposits 50% with the DRT

(xi) An arbitral award is passed in a domestic commercial dispute. The losing party files an application under Section 34 to set aside the award on the ground that the arbitrator committed a patent error in interpreting the terms of a complex engineering formula. Can the Court set aside the award on this ground?

A) Yes, patent illegality allows the Court to review the entire evidence de novo
B) No, Section 34(2A) explicitly bars setting aside an award merely on an erroneous application of law or by re-appreciation of evidence
C) Yes, if the claim exceeds ₹10 Crores
D) No, domestic awards can never be challenged under Section 34

(xii) Under PMLA, 2002, a property purchased by a third party for full bona fide market consideration from an accused person prior to any attachment is attached by the ED on the ground that the seller used tainted funds to acquire it originally. The buyer challenges the attachment as a bona fide purchaser. How is this evaluated?

A) The buyer has no remedy and the property must be confiscated automatically
B) A bona fide purchaser for value without notice of the crime can defend title before the Special Court / Appellate Tribunal to release the attachment
C) The buyer can only claim damages from the State Government
D) PMLA completely overrides all bona fide property transactions retrospectively for 20 years

(xiii) Under Section 188 of the Companies Act, 2013, if a company enters into a contract for sale of goods with a related party amounting to 12% of its annual turnover, and the contract is not at arm's length, the contract requires approval by:

A) Board of Directors only
B) Ordinary Resolution of Shareholders where no related party shall vote to approve the resolution
C) Special Resolution with 75% majority
D) Central Government approval via Regional Director

(xiv) Under SEBI (ICDR) Regulations, 2018, if a company issues shares via an IPO through the Book Building Route under Regulation 6(2) because it lacks an operating profit track record, what is the mandatory minimum allocation to Qualified Institutional Buyers (QIBs)?

A) 50% of the net offer
B) 60% of the net offer
C) 75% of the net offer
D) 90% of the net offer

(xv) An Indian resident individual remits USD 220,000 under LRS in August 2025 for portfolio investment in foreign equities. In February 2026, he seeks to gift USD 40,000 to his non-resident sister residing in London. Can the Authorized Dealer bank process this second remittance under the automatic LRS route?

A) Yes, because gifts are exempt from LRS ceilings
B) No, because the total remittance in FY 2025-26 would reach USD 260,000, breaching the annual statutory limit of USD 250,000
C) Yes, because capital account and current account transactions have separate USD 250,000 limits
D) No, because remittances to relatives are completely prohibited under FEMA

SECTION B: COMPREHENSIVE DESCRIPTIVE CASE STUDIES (Answer any 5 out of 7 - 70 Marks)

Question 2 **[14 Marks]**

(a) [8 Marks] Precision Engineering Ltd, an unlisted public company, has 1 Managing Director, 1 Whole-time Director, and 5 Non-Executive Directors. For the financial year ended 31st March 2026, the company's financial statements show the following:
- Profit before tax as per P&L: ₹80 Crores
- Debited: Provision for doubtful debts: ₹4 Crores
- Debited: Remuneration paid to Managing Director: ₹3 Crores
- Debited: Remuneration paid to Whole-time Director: ₹2.5 Crores
- Debited: Sitting fees paid to Non-Executive Directors: ₹40 Lakhs
- Debited: Commission on profits to Non-Executive Directors: ₹1.2 Crores
- Debited: Depreciation as per Schedule II: ₹12 Crores (Tax depreciation was ₹16 Crores)
- Debited: Provision for Gratuity (on actuarial basis): ₹2 Crores
- Credited: Profit on sale of an abandoned factory building (Cost ₹8 Cr, Sale Price ₹15 Cr, WDV Nil): ₹15 Crores

Compute the Net Profits for managerial remuneration strictly under Section 198 of the Companies Act, 2013. Determine whether the remuneration paid to the MD, WTD, and Non-Executive Directors is within the statutory percentage limits prescribed under Section 197. If any limit is breached, state the statutory remedy available to the company.

(b) [6 Marks] The Board of Directors of Stellar Ltd comprises 9 directors. A contract for the purchase of plant and machinery worth ₹40 Crores from a partnership firm where 6 directors are partners is placed for consideration before the Board. The remaining 3 non-interested directors attend the meeting. One of them abstains from voting, while the other 2 non-interested directors vote in favor. Examine whether a valid quorum existed for transacting this business under Section 174(3) of the Companies Act, 2013, and whether the resolution was legally passed.

Question 3 **[14 Marks]**

(a) [8 Marks] A group of minority shareholders holding 6% of the equity share capital in Dynamic Logistics Ltd (an unlisted company with 400 members) files a petition before the NCLT under Section 241 alleging that the promoter-directors issued shares on a preferential basis to their family members at a steep discount, thereby reducing the minority shareholding from 18% to 6%. The company raises a preliminary objection under Section 244 that the petitioners hold only 6% shares and represent only 24 members, and therefore the petition must be dismissed without looking into the merits. The petitioners file an application praying for a waiver of conditions under the proviso to Section 244(1). Analyze the legal principles governing the grant of waiver by the NCLT as established by judicial precedents (including the *Cyrus Investments* ruling).

(b) [6 Marks] The NCLT, after hearing an oppression and mismanagement petition under Section 241, passes an order under Section 242 terminating the management contract of the Managing Director, Mr. Harsh, and ordering an investigation into the siphoning of corporate funds. Mr. Harsh files a civil suit claiming ₹10 Crores as damages for wrongful termination of his 5-year employment contract. Simultaneously, after 18 months, the company's Board passes a resolution re-appointing Mr. Harsh as an Additional Director. Examine the validity of Mr. Harsh's civil suit and his re-appointment under Section 243 of the Companies Act, 2013.

Question 4 **[14 Marks]**

(a) [8 Marks] In the CIRP of Falcon Heavy Industries Ltd, the Resolution Professional receives two competing Resolution Plans. Plan 'A' is submitted by an entity whose promoter is the brother-in-law of the suspended promoter of Falcon Heavy Industries Ltd. Falcon's account was classified as an NPA 2 years prior to CIRP commencement and remains unresolved. Plan 'B' is submitted by an international strategic investor. The CoC, impressed by Plan 'A's higher upfront cash, votes 72% in favor of Plan 'A'. The dissenting financial creditors challenge the approval before the NCLT, arguing that Plan 'A' is disqualified under Section 29A of the IBC, 2016. Examine the disqualification criteria under Section 29A(c) and (j), and determine whether the CoC's approval can be upheld by the NCLT.

(b) [6 Marks] During the CIRP of a corporate debtor, the Adjudicating Authority admitted a Section 7 petition on 1st March 2025. On 10th March 2025, the State Electricity Board disconnected electricity supply to the corporate debtor's operational cold storage unit on the ground of non-payment of pre-CIRP arrears of ₹45 Lakhs. The IRP files an urgent application before the NCLT seeking restoration of electricity. Examine the statutory protections available to the corporate debtor under Section 14(2) and Section 14(2A) of the IBC, 2016.

Question 5 **[14 Marks]**

(a) [8 Marks] In the liquidation of Quantum Technologies Ltd under Chapter III of the IBC, 2016, the total net liquidation estate realizations amount to ₹150 Crores. The claims admitted by the Liquidator are:
- Liquidation Process Costs: ₹12 Crores
- Workmen's dues for 24 months preceding liquidation: ₹36 Crores
- Secured Financial Creditor 'X' (Relinquished security interest under Section 52): ₹84 Crores
- Secured Financial Creditor 'Y' (Enforced security interest outside Section 52, recovered ₹40 Cr against total claim of ₹70 Cr, leaving an unpaid deficit): ₹30 Crores
- Wages and salaries owed to non-workmen employees for 12 months: ₹18 Crores
- Unsecured Financial Creditors: ₹45 Crores
- Central Government (GST) and State Municipal Taxes (for 2 years): ₹20 Crores
- Operational Creditors (Trade Vendors): ₹25 Crores

Compute the exact allocation of funds to each category of claimants under the Section 53 Waterfall Mechanism. Show all working notes for pari passu abatement where applicable.

(b) [6 Marks] The Forensic Audit Report of a Corporate Debtor undergoing liquidation reveals that 8 months prior to the insolvency commencement date, the directors transferred 5 commercial luxury vehicles to personal friends for a total consideration of ₹10 Lakhs, while the book value and market valuation was ₹65 Lakhs. The directors contend that this was an ordinary commercial transaction. Under which section can the Liquidator challenge this transaction, and what orders can the NCLT pass under Section 45 to Section 48 of the IBC, 2016?

Question 6 **[14 Marks]**

(a) [8 Marks] Acquirer Corp currently holds 24.8% of the equity share capital in Vanguard Ltd (a listed target company). On 10th January 2026, Acquirer Corp enters into a Share Purchase Agreement (SPA) to acquire an additional 4.2% equity shares from a non-promoter institutional shareholder at ₹250 per share. The market price on the stock exchange on that date is ₹210. Concurrently, Acquirer Corp acquires an option to appoint 3 out of 5 directors on the Board of Vanguard Ltd. Outline the mandatory obligations triggered for Acquirer Corp under Regulations 3, 4, and 7 of the SEBI (SAST) Regulations, 2011. Calculate the minimum offer size, and state the statutory requirements for the Escrow Account under Regulation 17 if the total open offer consideration is ₹600 Crores.

(b) [6 Marks] Mr. Vikas, the Chief Technology Officer (CTO) of a listed telecom company, was part of a core confidential team negotiating a multi-billion dollar spectrum sharing agreement with a global tech giant. Two weeks prior to the board meeting approving the agreement, Mr. Vikas communicated the status of negotiations to his brother-in-law, an active stock trader, via an encrypted messaging app. The brother-in-law bought 50,000 shares of the telecom company and sold them immediately after the public announcement, making a profit of ₹2 Crores. Examine the legal liability of Mr. Vikas and his brother-in-law under Regulations 3 and 4 of the SEBI (PIT) Regulations, 2015, and the penal consequences under Section 15G of the SEBI Act, 1992.

Question 7 **[14 Marks]**

(a) [8 Marks] Tata Advanced Systems Ltd, an Indian entity, has a Net Worth of ₹800 Crores as per its latest audited balance sheet. It intends to establish an overseas joint venture in the UK. The proposed commitments are: (i) Equity subscription in UK JV: ₹1,500 Crores; (ii) Loan to UK JV: ₹600 Crores; (iii) Performance guarantee issued to the UK Ministry of Defence on behalf of the JV: ₹800 Crores; (iv) Pledge of shares of the Indian entity's domestic subsidiary: ₹400 Crores. Compute the total 'Financial Commitment' of the Indian entity under the Foreign Exchange Management (Overseas Investment) Rules, 2022. Determine whether the proposed investment can be undertaken under the Automatic Route. If not, state the procedure to be followed.

(b) [6 Marks] An exporter of marine products in Kochi exported seafood worth USD 800,000 to an overseas buyer in Japan on 1st March 2025. The Japanese buyer paid USD 300,000 on 1st August 2025. The remaining USD 500,000 remains unpaid as of 31st January 2026. What is the statutory time limit for realization of export proceeds under Section 7 of FEMA, 1999 read with the Export Regulations? If the exporter fails to realize the amount without an extension, calculate the maximum monetary penalty that can be imposed under Section 13(1) of FEMA.

Question 8 **[14 Marks]**

Write exhaustive, analytical case notes on any TWO of the following (7 Marks each):
(a) The statutory conditions, time limits, and non-compoundable restrictions governing the Compounding of Contraventions under Section 15 of FEMA, 1999, read with the Foreign Exchange (Compounding Proceedings) Rules, 2000.
(b) The mandatory procedure to be followed by a Secured Creditor under Section 13(2) and Section 13(3A) of the SARFAESI Act, 2002 upon receipt of an objection from the borrower, and the legal consequences of non-compliance as settled by the Supreme Court in *Mardia Chemicals vs Union of India*.
(c) The extraterritorial jurisdiction of the Competition Commission of India under Section 32 of the Competition Act, 2002 to regulate cross-border mergers and foreign cartels having an Appreciable Adverse Effect on Competition (AAEC) in India.

SUGGESTED ANSWERS: MOCK TEST 3

SECTION A: MULTIPLE CHOICE QUESTIONS

Q. No.	Correct Option	Statutory Reference & Detailed Justification
(i)	**B) Valid, because at least one ID was present at the time the decision was taken**	Under Section 173(3) of the Companies Act, 2013, urgent Board meetings can be convened on shorter notice provided at least one Independent Director is present. Even though one ID left, the presence of the other ID during the transaction of business and voting validates the proceeding.
(ii)	**B) Undervalued Transaction u/s 45 with 2-year look-back for related parties**	Section 45 of the IBC, 2016 applies to transactions where the Corporate Debtor transfers assets for a consideration significantly less than the market value. Under Section 46(1), the look-back period for an undervalued transaction entered into with a related party is **two years** preceding the insolvency commencement date (22 months falls within 2 years).
(iii)	**B) Reject the petition u/s 9(5)(ii)(d) due to prior pre-existing dispute**	In *Mobilox Innovations*, the Supreme Court ruled that any plausible dispute raised prior to the Section 8 Demand Notice constitutes a pre-existing dispute. Notice under Section 138 NI Act regarding security cheques shows that the underlying commercial relationship was in active dispute, mandating rejection under Section 9.
(iv)	**B) Yes, under Reg 3(1) entitlement beyond 25% includes conversion**	Under Regulation 2(1)(q) and Regulation 3(1) of SEBI (SAST), "shares" include convertible securities. Acquiring warrants that entitle the holder to exercise voting rights taking total holding from 24.5% to 28.5% (>25%) triggers a mandatory open offer at the time of warrant acquisition itself.
(v)	**A) Valid, because ₹400 Cr is < ₹1,000 Cr and < 10% turnover (₹900 Cr)**	Regulation 23(1) of SEBI (LODR) defines a Material RPT as exceeding ₹1,000 Crores OR 10% of annual consolidated turnover, whichever is lower. Here, 10% of ₹9,000 Cr = ₹900 Cr. Since ₹400 Cr is less than both ₹1,000 Cr and ₹900 Cr, it is not a material RPT and does not require shareholder approval.
(vi)	**B) Impermissible, domestic Rupee working capital refinancing requires MAMP of 7/10 years**	Under the RBI Master Direction on External Commercial Borrowings, using foreign currency ECB for refinancing domestic Rupee loans for working capital or general corporate purposes is strictly restricted to loans having a Minimum Average Maturity Period (MAMP) of **7 years or 10 years**. A 4-year MAMP is non-compliant.
(vii)	**C) NCLT has full discretionary statutory jurisdiction to grant waiver**	As held by the NCLAT and Supreme Court in *Cyrus Investments vs Tata Sons*, the proviso to Section 244(1) vests absolute judicial discretion in the NCLT to waive the numerical (100 members) and shareholding (10%) requirements upon establishing a prima facie case of oppression.
(viii)	**B) Governed strictly by Sec 53(1)(e) (Rank 5) unless registered as security**	In subsequent rulings (including *Paschimanchal Vidyut Vitran Nigam* and *Sanjay Kumar Agarwal*), the Supreme Court clarified that the *Rainbow Papers* doctrine applies only where the statutory charge is recognized as a perfected security interest; statutory crown debts otherwise stand at Rank 5 under Section 53.

(ix)	**B) No, Settlement mechanism explicitly excludes Cartels**	Section 48A and Section 48B of the Competition Act, 2002 (inserted by Competition Amendment Act, 2023) introduce the Settlement and Commitment framework exclusively for vertical agreements (Sec 3(4)) and abuse of dominance (Sec 4). Inquiries into **Cartels under Section 3(3) are statutorily excluded** from settlement.
(x)	**B) Void ab initio, Sec 13(3A) mandates consideration within 15 days**	In *Mardia Chemicals vs Union of India*, the Supreme Court established that considering the borrower's objection under Section 13(3A) and communicating reasons for non-acceptance within 15 days is a **mandatory statutory condition precedent**. Failure to do so invalidates subsequent possession measures under Section 13(4).
(xi)	**B) No, Section 34(2A) explicitly bars re-appreciation of evidence**	Section 34(2A) of the Arbitration Act states that an award arising out of domestic arbitrations shall not be set aside merely on the ground of an erroneous application of law or by re-appreciation of evidence. Contractual interpretation falls within the exclusive domain of the arbitral tribunal.
(xii)	**B) Bona fide purchaser for value without notice can defend title**	Under PMLA jurisprudence, an innocent third party who acquired an asset for full market value without knowledge of tainted origin is protected; the attachment can be set aside by demonstrating bona fide title before the Adjudicating Authority/Appellate Tribunal.
(xiii)	**B) Ordinary Resolution where no related party shall vote**	Section 188(1)(a) read with Rule 15 requires an **Ordinary Resolution** for sale of goods exceeding 10% of turnover. Under the second proviso to Section 188(1), no member of the company who is a related party shall vote on such resolution.
(xiv)	**C) 75% of the net offer**	Regulation 6(2) of SEBI (ICDR) Regulations mandates that if an issuer does not satisfy the net tangible asset or operating profit criteria under Regulation 6(1), it must make the issue through the Book Building process and allot at least **75% of the net offer to Qualified Institutional Buyers (QIBs)**.
(xv)	**B) No, total remittance reaches USD 260,000, breaching the USD 250,000 ceiling**	Under the Liberalised Remittance Scheme (LRS), the overall ceiling of **USD 250,000 per financial year** applies comprehensively to all permitted capital and current account transactions combined. remitting USD 220,000 + USD 40,000 = USD 260,000 breaches the limit by USD 10,000.

SECTION B: COMPREHENSIVE DESCRIPTIVE CASE STUDIES

Answer to Question 2(a): Section 198 Net Profit Computation & Managerial Ceilings

1. Legal Principles under Section 198:

Section 198 of the Companies Act, 2013 lays down the exclusive algorithm for calculating Net Profits for managerial remuneration under Section 197:
- *Inadmissible Debits (to be added back):* Provision for doubtful debts (Sec 198(4)(c) - unascertained liability); Remuneration paid to MD, WTD, and Directors (Sec 198(4)(j)).
- *Permissible Expenses (no adjustment):* Sitting fees (exempt from managerial remuneration ceiling u/s 197(5)); Provision for Gratuity on actuarial basis (ascertained liability).
- *Depreciation:* Must be deducted as per Schedule II (₹12 Cr). Tax depreciation (₹16 Cr) is completely ignored.
- *Capital Profits (to be deducted):* Profit on sale of abandoned factory building: Section 198(3)(a) permits credit only for the excess of sale price over WDV up to the original cost. Capital gain over original cost (₹15 Cr - ₹8 Cr = ₹7 Cr) must be excluded. Here, the whole ₹15 Cr was credited to P&L, so the ₹7 Cr capital gain must be deducted.

2. Step-by-Step Computation of Net Profit u/s 198:

Particulars	Statutory Treatment	Amount (₹ in Crores)
Profit before tax as per P&L Statement	Starting base	**80.00**
Add: Provision for doubtful debts	Added back u/s 198(4)(c)	4.00
Add: Remuneration paid to MD	Added back u/s 198(4)(j)	3.00
Add: Remuneration paid to WTD	Added back u/s 198(4)(j)	2.50
Add: Commission paid to Non-Executive Directors	Added back u/s 198(4)(j)	1.20
Add: Sitting fees paid	Statutorily excluded from remuneration u/s 197(5)	0.00
Sub-total (A)		**90.70**
Less: Capital profit on sale of building above cost	Deducted u/s 198(3)(a) (₹15 Cr - ₹8 Cr)	(7.00)
Total Deductions (B)		**(7.00)**
Net Profit for Managerial Remuneration u/s 198 (A - B)		**₹83.70 Crores**

3. Evaluation of Remuneration Paid against Section 197 Limits:

- **Managing Director + Whole-time Director (Combined Limit):** Under Section 197(1), where there is more than one MD/WTD, the total remuneration to all of them combined shall not exceed **10% of Net Profits**.
  Max combined limit = 10% of ₹83.70 Cr = **₹8.37 Crores**.

Actual paid to MD (₹3 Cr) + WTD (₹2.5 Cr) = ₹5.50 Crores. *(Within the 10% limit).*
Individual limit for MD (5% of ₹83.70 Cr = ₹4.185 Cr). Actual paid = ₹3 Cr. *(Within the 5% limit).*

- **Non-Executive Directors (Commission Limit):** Under Section 197(1)(ii)(A), where the company has an MD/WTD, remuneration to all non-executive directors combined cannot exceed **1% of Net Profits**.
  Max limit = 1% of ₹83.70 Cr = **₹0.837 Crores (₹83.70 Lakhs)**.
  Actual commission paid = **₹1.20 Crores (₹120 Lakhs)**.
  Violation: Excess commission paid = ₹120 Lakhs - ₹83.70 Lakhs = **₹36.30 Lakhs**.

4. Statutory Remedy:

Under Section 197(1), the company can pay remuneration exceeding 1% by passing a **Special Resolution** in general meeting. Under Section 197(10), if not approved by Special Resolution, the excess amount of ₹36.30 Lakhs must be refunded by the non-executive directors to the company, unless waived by passing a Special Resolution within 2 years.

Answer to Question 2(b): Quorum for Board Meeting with Interested Directors (Sec 174(3))

1. Legal Provision (Section 174(3)):

Under Section 174(1), the standard quorum for a Board meeting is one-third of total strength or two directors, whichever is higher (1/3rd of 9 = 3 directors).
However, Section 174(3) creates an explicit exception for interested directors: *"Where at any time the number of interested directors exceeds or is equal to* ***two-thirds of the total strength*** *of the Board of Directors, the number of directors who are not interested and are present at the meeting, being* ***not less than two****, shall be the quorum during such time."*

2. Analysis of Facts:

- Total strength of Board = 9 directors.
- Two-thirds (2/3rd) threshold = (2/3) x 9 = **6 directors**.
- Number of interested directors = 6 directors.
- Because interested directors (6) equal 2/3rd of total strength, Section 174(3) applies.
- Number of non-interested directors present = 3 directors (which is ≥ 2).
- Therefore, a **valid statutory quorum was present** at the meeting under Section 174(3).

3. Voting and Passing of Resolution:

Of the 3 non-interested directors present, 1 director abstained. The remaining **2 non-interested directors voted unanimously in favor** of the resolution. Under the Companies Act, a resolution is passed if the votes cast in favor exceed the votes cast against by members entitled to vote and voting. Here, votes in favor = 2, votes against = 0.
Conclusion: A valid statutory quorum existed under Section 174(3), and the resolution for purchasing plant and machinery was **legally and validly passed**.

Answer to Question 3(a): Principles Governing Grant of Waiver under Section 244(1)

1. Statutory Thresholds & The Waiver Proviso (Section 244(1)):

Section 244(1)(a) requires that an oppression petition under Section 241 can be filed only by: (i) not less than 100 members, OR (ii) not less than 1/10th of the total number of members, OR (iii) members holding not less than 1/10th (10%) of the issued share capital. The petitioners (24 members holding 6%) clearly fail all numerical thresholds.
However, the **proviso to Section 244(1)** empowers the Tribunal: *"Provided that the Tribunal may, on an application made to it in this behalf, **waive all or any of the requirements** specified in clause (a) or clause (b) so as to enable the members to apply under section 241."*

2. Judicial Principles Settled by NCLAT / Supreme Court (Cyrus Investments Case):

In *Cyrus Investments Pvt Ltd vs Tata Sons Ltd*, the NCLAT laid down authoritative principles governing the grant of waiver under Section 244:

1. The Tribunal cannot dismiss an application for waiver merely because the applicants do not meet the 100 member / 10% criteria (as that would render the waiver proviso otiose).
2. The Tribunal must examine whether the applicant has a **substantial interest** in the company and whether the allegations pertain to **grave acts of oppression and mismanagement** rather than frivolous squabbles.
3. The Tribunal should evaluate whether the alleged oppressive act (e.g., disproportionate rights/ preferential issue reducing shareholding) was deliberately engineered by the majority to disenfranchise the minority below the 10% threshold.
4. The Tribunal must see whether the allegations, if left uninvestigated, would cause irreparable harm to the company or public interest.

3. Conclusion:

The reduction of minority shareholding from 18% to 6% through discounted preferential allotment to promoter relatives is a classic, prima facie case of oppressive share dilution. The NCLT will reject the company's preliminary objection, **grant the waiver under the proviso to Section 244(1)**, and hear the petition on its merits.

Answer to Question 3(b): Consequences of NCLT Termination of MD (Sec 242 & 243)

1. Bar on Claims for Damages / Compensation (Section 243(1)(a)):

Section 243(1)(a) explicitly provides: *"Where an order terminating, setting aside or modifying an agreement is made under section 242, such order shall **not give rise to any claim whatever against the company by any person for damages or for compensation for loss of office** or in any other respect, either in pursuance of the agreement or otherwise."*
Conclusion on Civil Suit: Mr. Harsh's civil suit claiming ₹10 Crores damages is barred by statute. Section 243 completely extinguishes any contractual right to compensation when an employment contract is terminated by an order of the NCLT. The suit will be dismissed.

2. Debarment from Directorship (Section 243(1)(b)):

Section 243(1)(b) states: *"No managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of **five years from the date of the order**, without the **leave of the Tribunal**, be appointed, or act, as the managing director or other director or manager of the company."*
Conclusion on Re-appointment: The Board resolution appointing Mr. Harsh as Additional Director after 18 months is **illegal, void ab initio, and in direct contempt of law**. Mr. Harsh is under a mandatory statutory debarment of 5 years. Without obtaining prior express leave from the NCLT, he cannot be appointed to any directorship in the company.

Answer to Question 4(a): Section 29A Disqualification under IBC, 2016

1. Statutory Framework of Section 29A:

Section 29A was inserted into the IBC to prevent errant promoters and related persons from regaining control of distressed assets at discounted values.
- **Section 29A(c):** Disqualifies any person who has an account classified as a Non-Performing Asset (NPA) under RBI guidelines for a period of **one year or more** prior to the CIRP commencement date, and who has failed to clear all overdue amounts with interest.
- **Section 29A(j) read with Explanation I:** Disqualifies any person if any **connected person** suffers from any of the disabilities under clauses (a) to (i). Under Explanation I(iii), 'connected person' includes a **related party** of the resolution applicant.

2. Evaluation of Plan 'A' and Related Party Status:

The promoter of the entity submitting Plan 'A' is the brother-in-law of the suspended promoter of the Corporate Debtor. Under Section 5(24A)(h), a 'related party' in relation to an individual includes a relative, and 'relative' under Section 2(77) of the Companies Act includes a spouse's brother (brother-in-law). Because the applicant is a related party acting in concert with the promoter whose account has been an NPA for 2 years (exceeding the 1-year threshold), Plan 'A' is directly hit by the disqualification under **Section 29A(c) read with Section 29A(j)**.

3. Conclusion:

The Supreme Court in *ArcelorMittal India Pvt Ltd vs Satish Kumar Gupta* held that the CoC cannot approve a plan submitted by an ineligible applicant under Section 29A, even if it offers a higher commercial value. Commercial wisdom of the CoC cannot override the statutory prohibitions of Section 29A. The NCLT will **quash the CoC's approval of Plan 'A'** and direct the CoC to consider Plan 'B'.

Answer to Question 4(b): Protection of Essential & Critical Supplies during CIRP (Sec 14)

1. Protection of Essential Goods and Services (Section 14(2)):

Section 14(2) of the IBC, 2016 provides that the supply of **essential goods or services** to the corporate debtor as may be specified (which includes electricity, water, telecommunication, and information technology services) shall **not be terminated or suspended or interrupted** during the moratorium period.

2. Protection of Critical Supplies for Going Concern (Section 14(2A)):

Section 14(2A) (inserted by the 2020 Amendment) explicitly mandates: *"Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall **not be terminated, suspended or interrupted during the period of moratorium**, even if there were dues arising before the commencement of the insolvency, **provided the corporate debtor pays the dues arising from the current supply** during the period of moratorium."*

3. Application to Facts & Conclusion:

Electricity supply to a cold storage unit is an essential service under Section 14(2) and a critical supply under Section 14(2A) to preserve the perishable inventory and maintain going concern status. The State Electricity Board **cannot disconnect power on account of pre-CIRP arrears** (which must be claimed as an operational debt in Form B). Provided the IRP pays the current electricity consumption charges incurred during the CIRP period as CIRP cost, the NCLT will order the immediate restoration of electricity supply.

Answer to Question 5(a): Liquidation Waterfall Computation (Section 53)

1. Statutory Hierarchy & Principles (Section 53(1)):

1. **Rank 1 (Sec 53(1)(a)):** CIRP costs and liquidation costs paid in full.
2. **Rank 2 (Sec 53(1)(b)):** Workmen's dues for 24 months AND debts owed to secured creditors who have **relinquished security interest**, ranking *pari passu*.
3. **Rank 3 (Sec 53(1)(c)):** Wages and unpaid dues to non-workmen employees for 12 months.
4. **Rank 4 (Sec 53(1)(d)):** Financial debts owed to unsecured creditors.
5. **Rank 5 (Sec 53(1)(e)):** Central and State Government taxes (2 years) AND unpaid balance of secured creditors who enforced security outside liquidation (Sec 53(1)(e)(ii)), ranking *pari passu*.
6. **Rank 6 (Sec 53(1)(f)):** Any remaining debts (including trade operational creditors).

2. Step-by-Step Distribution of ₹150 Crores Proceeds:

Rank / Category	Claim (₹ Cr)	Amount Distributed (₹ Cr)	Balance Remaining (₹ Cr)
Total Liquidation Proceeds Realized			**150.00**
Rank 1: Liquidation Process Costs	12.00	**12.00** (Paid in full)	138.00
Rank 2 (Pari Passu): Workmen Dues (₹36 Cr) & Secured Creditor 'X' (Relinquished: ₹84 Cr)	120.00 (36 + 84)	**120.00** (Paid in full)	18.00
Rank 3: Non-workmen Employee Wages (12m)	18.00	**18.00** (Paid in full)	**0.00 (NIL)**
Rank 4: Unsecured Financial Creditors	45.00	**0.00** (NIL)	0.00
Rank 5: Govt Taxes (₹20 Cr) & Secured Creditor 'Y' Deficit (₹30 Cr)	50.00	**0.00** (NIL)	0.00
Rank 6: Trade Operational Creditors	25.00	**0.00** (NIL)	0.00

3. Treatment of Secured Creditor 'Y' (Unpaid Deficit of ₹30 Crores):

Secured Creditor 'Y' elected to realize its security interest outside the liquidation process under Section 52. Consequently, under Section 53(1)(e)(ii), its unpaid shortfall of ₹30 Crores **loses its secured Rank 2 priority and drops down to Rank 5**, ranking pari passu with Government taxes. Because the liquidation estate proceeds were completely exhausted at Rank 3 (Employee wages), **Secured Creditor 'Y' receives NIL** from the estate for its ₹30 Crore shortfall. Unsecured financial creditors and trade vendors also receive NIL.

Answer to Question 5(b): Avoidance of Undervalued Transactions (Sec 45 & 48)

1. Essential Ingredients of Undervalued Transactions (Section 45(2)):

Under Section 45(2) of the IBC, a transaction is undervalued if:
(a) The corporate debtor makes a gift to a person; or
(b) The corporate debtor enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is **significantly less than the value of the consideration provided by the corporate debtor**, and such transaction has not taken place in the ordinary course of business.

2. Relevant Period / Look-Back Period (Section 46(1)):

The look-back period is:
- **One year** preceding the insolvency commencement date for transactions with unrelated parties.
- **Two years** preceding the insolvency commencement date for transactions with a **related party**.
The transfer occurred 8 months prior to insolvency, which falls within the statutory 1-year look-back window for all parties.

3. Orders of the Adjudicating Authority (Section 48):

Selling luxury vehicles worth ₹65 Lakhs for a meager ₹10 Lakhs to personal friends is a clear case of an undervalued transaction outside the ordinary course of business. The NCLT can pass orders under Section 48 to:
(i) Declare the transaction **null and void** and vest the vehicles back in the liquidation estate;
(ii) Require the transferees to pay the difference in value (₹55 Lakhs); or
(iii) Direct the directors to make contributions to the assets of the corporate debtor under Section 66 for wrongful/fraudulent trading.

Answer to Question 6(a): SAST Takeover Triggers, Escrow & Open Offer Size

1. Statutory Triggers under SAST Regulations:

- Existing holding of Acquirer Corp = 24.8%. Additional acquisition under SPA = 4.2%. Post-acquisition holding = 24.8% + 4.2% = **29.0%**.
- **Regulation 3(1) Trigger:** An acquisition that takes the aggregate voting rights to **25% or more** mandates a public announcement of an Open Offer.
- **Regulation 4 Trigger (Control):** Acquiring the right to appoint 3 out of 5 directors (majority) confers "control" over the target company, independently triggering an Open Offer under Regulation 4 irrespective of shareholding.

2. Minimum Offer Size (Regulation 7(1)):

Under Regulation 7(1), the open offer made by the acquirer shall be for at least **twenty-six per cent (26%) of the total shares** of the target company as of the tenth working day from the closure of the tendering period.

3. Escrow Account Requirement (Regulation 17):

Under Regulation 17, the acquirer must open an Escrow Account towards security for performance of open offer obligations. The required deposit is computed as:
- On the first ₹500 Crores of consideration: **25%** of the consideration.
- On the balance consideration exceeding ₹500 Crores: **10%** of the excess consideration.

Computation for ₹600 Crores Consideration:

- On first ₹500 Crores = 25% of ₹500 Cr = **₹125 Crores**.
- On balance ₹100 Crores (₹600 Cr - ₹500 Cr) = 10% of ₹100 Cr = **₹10 Crores**.
- **Total Escrow Account Deposit Required = ₹125 Cr + ₹10 Cr = ₹135 Crores.**

Answer to Question 6(b): Insider Trading Violations & Penalties under PIT / SEBI Act

1. Liability of Mr. Vikas (CTO) for Communication of UPSI:

Under Regulation 3(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015, no insider shall communicate, provide, or allow access to any Unpublished Price Sensitive Information (UPSI) relating to a company or securities to any person, except in furtherance of legitimate purposes, performance of duties, or discharge of legal obligations.
A multi-billion dollar spectrum deal is core UPSI. Communicating this to a brother-in-law over an encrypted app is NOT for any legitimate corporate purpose. Mr. Vikas has committed a direct violation of Regulation 3(1).

2. Liability of Brother-in-Law for Trading on UPSI:

Under Section 2(1)(g) of PIT Regulations, an "insider" includes any person who is in possession of or has access to UPSI, or is a "connected person". Trading while in possession of UPSI is strictly prohibited under Regulation 4(1). The brother-in-law traded with insider knowledge to make ₹2 Crores profit, directly violating Regulation 4(1).

3. Penalties under Section 15G of the SEBI Act, 1992:

Section 15G prescribes that if any insider communicates UPSI or deals in securities on the basis of UPSI, he shall be liable to a penalty which shall **not be less than ₹10 Lakhs, but which may extend to ₹25 Crores OR three times the amount of profits made out of insider trading, whichever is higher**.
- 3 times the profit = 3 x ₹2 Crores = ₹6 Crores.
- Higher of ₹25 Crores or ₹6 Crores = **₹25 Crores**.

SEBI can also pass orders under Section 11B for **disgorgement of the ₹2 Crores profit with 12% interest**, debar both individuals from the securities market for a specified term, and refer the matter for criminal prosecution.

Answer to Question 7(a): ODI Financial Commitment Limit (FEMA Rules, 2022)

1. Statutory Definition of Financial Commitment (Rule 2(f)):

Under the Foreign Exchange Management (Overseas Investment) Rules, 2022, "Financial Commitment" means the aggregate amount of investment made by an Indian entity in all foreign entities by way of:
(i) 100% of equity share capital / capital contribution;
(ii) 100% of debt / loan granted to the foreign entity;
(iii) 100% of corporate guarantees issued on behalf of the foreign entity;
(iv) **50% of the amount of performance guarantees** issued on behalf of the foreign entity; and
(v) 100% of pledge or charge created over assets.

2. Computation of Financial Commitment of Tata Advanced Systems Ltd:

Component of Overseas Investment	Statutory Percentage Included	Amount (₹ in Crores)
Equity Subscription in UK JV	100% of equity	1,500.00
Loan granted to UK JV	100% of loan amount	600.00
Performance Guarantee to UK MoD	**50%** of performance guarantee value (50% of ₹800 Cr)	400.00
Pledge of shares of domestic subsidiary	100% of pledge/charge value	400.00
Total Computed Financial Commitment		**₹2,900.00 Crores**

3. Evaluation of Automatic Route Limit:

- Net Worth of the Indian Entity = ₹800 Crores.
- Maximum Permissible Financial Commitment under Automatic Route = **400% of Net Worth** = 400% of ₹800 Cr = **₹3,200 Crores**.
- Total Computed Financial Commitment = **₹2,900 Crores**.

Conclusion: Because the computed financial commitment of ₹2,900 Crores is **less than the statutory limit of ₹3,200 Crores**, the proposed investment can be **undertaken fully under the Automatic Route** without seeking prior approval from the Reserve Bank of India. The entity needs only to route the remittances through its Authorized Dealer bank and submit Form FC.

Answer to Question 7(b): Export Realization Timelines & Section 13(1) FEMA Penalties

1. Statutory Realization Period:

Under Section 7 of FEMA, 1999 read with Regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, the full value of goods exported shall be realized and repatriated to India within **nine months** from the date of export.
- Date of export: 1st March 2025. Statutory 9-month window expired on: **30th November 2025**.
- As of 31st January 2026, USD 500,000 remains unrealized without any extension. A contravention of Section 7 has occurred.

2. Computation of Maximum Penalty under Section 13(1):

Under Section 13(1) of FEMA, 1999, where any person contravenes any provision of the Act, rule, regulation, or direction, and the amount involved in such contravention is quantifiable, he shall be liable to a penalty **up to three times (3x) the sum involved** in such contravention.
- Unrealized amount = USD 500,000.
- Assuming an exchange rate of ₹85 / USD, sum involved = USD 500,000 x ₹85 = **₹4.25 Crores**.
- **Maximum Penalty (3x) = 3 x ₹4.25 Crores = ₹12.75 Crores.**
Furthermore, under Section 13(2), the Adjudicating Authority may order the confiscation of any currency, security, or property belonging to the exporter up to the value of the contravention.

Answer to Question 8(a): Compounding of Contraventions under FEMA (Sec 15)

1. Nature & Scope of Compounding:

Section 15 of FEMA, 1999 provides for the compounding of contraventions by the Reserve Bank of India (for regulatory/FDI/ODI/ECB defaults) and the Directorate of Enforcement (for Hawala/Section 3(a) defaults). It is an amicable settlement mechanism where the contravener admits the violation and pays a compounding fee.

2. Critical Statutory Timelines & Rules:

- **Application:** Can be submitted voluntarily by the contravener when a default is noticed.
- **Time limit to pass order:** The Compounding Authority shall pass an order **within 180 days** from the date of receipt of the application.
- **Payment of Compounding Fee:** The sum compounded must be paid by demand draft within **15 days** from the date of the order. Failure to pay revives prosecution under Section 13.
- **Three-Year Prohibition on Recurring Offences:** Under the third proviso to Section 15(1), no contravention can be compounded if an identical contravention was committed by the person within **three years** from the date of the previous compounding.
- **Non-Compoundable Violations:** Transactions involving serious fraud, terror financing, or offences investigated under the Prevention of Money Laundering Act (PMLA) CANNOT be compounded under FEMA.

Answer to Question 8(b): Mandatory Procedure u/s 13(2) & 13(3A) of SARFAESI Act

1. The 60-Day Notice & Borrower's Representation (Section 13(2) & 13(3A)):

Under Section 13(2), upon classification of an account as NPA, the secured creditor sends a 60-day demand notice. Under Section 13(3A) (inserted following the *Mardia Chemicals* judgment), the borrower has the right to make a representation or raise an objection against the notice.

2. Mandatory Duties of the Secured Creditor:

- The secured creditor **must consider** the borrower's representation or objection with an open mind.
- If the creditor rejects the objection, it must communicate the reasons for non-acceptance within **fifteen (15) days** of receiving the representation.
- *Consequences of Non-compliance:* In *Mardia Chemicals vs Union of India*, the Supreme Court held that compliance with Section 13(3A) is a **mandatory condition precedent**. If a bank fails to respond to the borrower's objection within 15 days and proceeds to take possession under Section 13(4), the entire enforcement measure is void ab initio, and the DRT will restore possession of the asset to the borrower.

Answer to Question 8(c): Extraterritorial Jurisdiction of CCI (Section 32)

1. The "Effects Doctrine" under Section 32:

Section 32 of the Competition Act, 2002 codifies the globally recognized "Effects Doctrine". It empowers the Competition Commission of India (CCI) to inquire into and pass orders against any anti-competitive agreement, abuse of dominant position, or combination even if:

1. An agreement has been entered into outside India;
2. Any party to such agreement is outside India;
3. Any enterprise abusing dominant position is outside India;
4. A combination has taken place outside India; or
5. Any other matter or practice or action arising out of such agreement or combination is outside India.

2. Threshold of Enforcement:

The sole jurisdictional prerequisite for invoking Section 32 is that the overseas act, cartel, or merger **has, or is likely to have, an Appreciable Adverse Effect on Competition (AAEC) in the relevant market in India**. If two foreign companies merge in New York or London, but their combined entity would control 80% of the market supply in India, the CCI has full extraterritorial jurisdiction to investigate, impose conditions, or block the merger's implementation within Indian territory.

--- END OF MOCK TEST 3 (MASTER-LEVEL CASE QUESTION PAPER & COMPLETE SUGGESTED ANSWERS) ---

ICMAI PAPER 13

CORPORATE AND ECONOMIC LAWS

PART 9: BONUS SECTION

Full Syllabus Review, Exam Strategy, Do's & Don'ts, and Master Directory of Sections, Rules & Forms

Target Examination: December 2026
Syllabus Framework: ICMAI 2022

cmaknowledge.in

1. Full Syllabus Review & Weightage (ICMAI 2022)

Paper 13 is fundamentally theory-based but demands intense application-oriented legal writing. Understanding the syllabus weightage is crucial to allocate your revision time effectively.

Section	Syllabus Component	Weightage
Section A	**Corporate Laws (60% Total Weightage)** **1. Companies Act, 2013:** Board of Directors, Board Meetings, Managerial Remuneration, Inspection & SFIO, Compromises & Amalgamations, Oppression & Mismanagement, Winding Up. **2. Insolvency and Bankruptcy Code, 2016:** CIRP, Liquidation, Fast Track, PPIRP.	**40%** **20%**
Section B	**Economic Laws and Regulations (40% Total Weightage)** **3. Securities Laws (SEBI):** LODR, ICDR, SAST, PIT. **4. Foreign Exchange Management Act (FEMA), 1999:** Current/Capital transactions, FDI, ODI, ECB, Compounding. **5. Other Economic Laws:** Competition Act, PMLA, SARFAESI, Arbitration & Conciliation Act, FCRA.	**15%** **10%** **15%**

2. How to Study Corporate & Economic Laws

1. **Ditch Rote Memorization for Conceptual Links:** Law is not about blindly memorizing text; it is about conditions and consequences. If you study Section 185 (Loans to Directors), instantly link it to the penalty provision and the specific exemption for Wholly Owned Subsidiaries.
2. **Create Timelines & Limit Charts:** A huge portion of this paper relies on numerical memory. Create a master sheet for: *Days* (e.g., 120 days for Board meetings, 330 days for CIRP, 210 days standstill for CCI combinations) and *Monetary Limits* (e.g., ₹1 Crore for IBC default, ₹1,000 Crore for LODR RPTs).
3. **Read the Bare Act Language:** ICMAI examiners look for specific statutory phrasing. Words like *"Special Resolution"*, *"Arm's Length Basis"*, *"Pre-existing Dispute"*, and *"Appreciable Adverse Effect on Competition"* must be part of your vocabulary.
4. **Focus on Recent Amendments & Landmark Case Laws:** The Institute heavily tests recent changes. Ensure you are familiar with the 2024 SEBI amendments (market rumors, promoter shortfall), IBC PPIRP rules, and landmark cases like *Mobilox Innovations* and *Rainbow Papers*.

3. How to Solve the Paper in the Exam

The 15-Minute Reading Strategy:
Do not read the entire paper from start to finish line by line. Skim the descriptive questions first. Identify the **core subject** (IBC, SEBI, Companies Act) and the **specific trigger issue** (e.g., "Is the 60-day notice valid?", "Does it require a Special Resolution?"). Select the 5 questions you are most confident in tackling.

- **Sequence of Answering:** Start with Section A (MCQs). These 30 marks are the highest return-on-investment for your time. Then move to the descriptive questions you know best. Leave the most complex cross-statute case study for the end.
- **Time Management (The 1.8 Minute Rule):** You have 180 minutes for 100 marks (1.8 minutes per mark). A 14-mark question block should take no more than 25 minutes. A 6-mark sub-question gets exactly 10 minutes. If you are stuck, leave a page and move on.
- **Formatting Your Answers:** Break your answer into clear, distinct paragraphs with headings. Use bullet points for listing out exceptions or limits. A messy, unbroken wall of text will cause the examiner to miss your key points.

4. Do's and Don'ts in Answer Writing

The DO's (Best Practices)	The DON'Ts (Fatal Errors)
1. Use the 3-Tier Structure: Every case study MUST follow this format: - *Legal Provision:* Quote the section/rule. - *Analysis of Facts:* Map the provision to the facts of the question. - *Conclusion:* Give a clear Yes/No/Valid/Void statement.	**1. Don't write stories:** The examiner is looking for legal accuracy, not length. Padding an answer with generic corporate philosophy will fetch zero marks.
2. Quote Section Numbers (Only if sure): Writing "As per Section 188 of the Companies Act, 2013..." gives the examiner immediate confidence in your preparation.	**2. Don't guess Section Numbers:** Quoting the WRONG section number is fatal. If you forget the section, simply write: *"As per the relevant provisions of the Companies Act, 2013..."*
3. Underline Key Words: Underline phrases like Ordinary Resolution, Arm's Length Basis, Void ab initio, and Financial Creditor to draw the examiner's eye to your correct logic.	**3. Don't merge the analysis and conclusion:** If a question asks "Advise the Board", do not bury your advice in the middle of a paragraph. Put "Conclusion / Advice:" as a separate, distinct heading at the end.
4. State the governing Act correctly: Always write the full name of the Act in the opening sentence (e.g., *"Under the provisions of the Insolvency and Bankruptcy Code, 2016..."*).	**4. Don't ignore numerical thresholds:** Never state a legal rule without its numerical boundary. Don't just say "Requires creditor approval" — say "Requires approval of 75% in value of creditors present and voting."

5. Master Directory: Sections & Provisions

Use this directory for rapid, one-day-before-exam scanning. If you see the topic on the exam, this is the Section number you must trigger in your brain.

I. Companies Act, 2013

- **Sec 173:** Meetings of Board (120 days max gap, 7-day notice).
- **Sec 174:** Quorum for Board Meetings (1/3rd or 2).
- **Sec 177:** Audit Committee & Vigil Mechanism.
- **Sec 180:** Restrictions on powers of Board (Sale of undertaking, Borrowings requiring SR).
- **Sec 184:** Disclosure of Interest by Director (>2%).

- **Sec 185:** Loans to Directors (Prohibited, WOS exemption).
- **Sec 186:** Loan and Investment by Company (60% / 100% threshold, unanimous board consent).
- **Sec 188:** Related Party Transactions (Arm's length exemption).
- **Sec 196:** Appointment of MD/WTD (21 to 70 years, 5-year tenure).
- **Sec 197:** Managerial Remuneration (11% limit, Schedule V for inadequate profits).
- **Sec 204:** Secretarial Audit.
- **Sec 212:** Investigation by Serious Fraud Investigation Office (SFIO) & Strict Bail conditions.
- **Sec 230:** Compromise & Arrangements (75% value threshold).
- **Sec 233:** Fast Track Merger (Holding & WOS / Small companies).
- **Sec 241 & 244:** Oppression & Mismanagement (100 members or 10% threshold).
- **Sec 271:** Winding up by Tribunal (Fraud, Just & Equitable, 5-year ITR default).
- **Sec 326 & 327:** Overriding preferential payments (Workmen & Secured creditors).
- **Sec 441:** Compounding of Offences (RD for ≤ ₹25L, NCLT for > ₹25L).

II. Insolvency and Bankruptcy Code (IBC), 2016

- **Sec 4:** Default threshold (₹1 Crore).
- **Sec 7:** Initiation by Financial Creditor (Based on default).
- **Sec 8 & 9:** Initiation by Operational Creditor (10-day notice, Pre-existing dispute defense).
- **Sec 12:** Time-limit for CIRP (180 days + 90 days = 330 days outer limit).
- **Sec 12A:** Withdrawal of application (Requires 90% CoC approval).
- **Sec 14:** Moratorium.
- **Sec 29A:** Persons not eligible to be resolution applicant (NPAs, willful defaulters).
- **Sec 30(4):** Approval of Resolution Plan by CoC (66% voting share).
- **Sec 33:** Initiation of Liquidation.
- **Sec 43, 45, 50, 66:** Avoidance Transactions (Preferential, Undervalued, Extortionate, Fraudulent).
- **Sec 53:** Distribution of Assets (Waterfall Mechanism).
- **Sec 54A to 54P:** Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs (₹10 Lakh threshold).
- **Sec 59:** Voluntary Liquidation (Declaration of Solvency mandatory).

III. Securities Laws (SEBI)

- **SEBI Act Sec 11C:** Investigation & Search/Seizure.
- **SEBI Act Sec 15T & 15Z:** Appeals to SAT (45 days) and Supreme Court (60 days).
- **LODR Reg 17:** Board Composition (50% Independent if promoter is Chairperson).
- **LODR Reg 18:** Audit Committee (2/3rd Independent).
- **LODR Reg 23:** Material RPTs (Lower of ₹1000 Cr or 10% Turnover).
- **LODR Reg 30:** Disclosure of material events & verification of market rumors.
- **ICDR Reg 6:** IPO Eligibility (₹15 Cr profit, ₹3 Cr assets).
- **ICDR Reg 14 & 16:** Minimum Promoter Contribution (20%) and Lock-in (18 months).
- **SAST Reg 3(1):** Initial Trigger for Open Offer (25% voting rights).
- **SAST Reg 3(2):** Creeping Acquisition (Max 5% per FY).
- **SAST Reg 17:** Escrow Account (25% for first ₹500 Cr, 10% for balance).
- **PIT Reg 3 & 4:** Prohibition on communication of UPSI and Trading.
- **PIT Reg 5:** Trading Plans (6-month cooling off, 12-month tenure, Irrevocable).

IV. Foreign Exchange Management Act (FEMA), 1999

- **Sec 2(v):** Person Resident in India (182-day rule + Intent test).
- **Sec 5:** Current Account Transactions (Schedules I, II, III).
- **Sec 6:** Capital Account Transactions.
- **Sec 6(4):** Holding offshore property acquired while non-resident or via inheritance.
- **Sec 7:** Export realization (9 months generally, 15 months for warehouses).
- **Sec 13:** Penalties (3x sum involved or ₹2 Lakhs).
- **Sec 15:** Compounding of contraventions (180 days to order, 15 days to pay).
- **ODI Rules 2022:** Financial Commitment capped at 400% of Net Worth.
- **ECB Rules:** Minimum Average Maturity Period (MAMP 3 years standard).

V. Other Economic Laws

- **PMLA Sec 3:** Offence of Money Laundering (Projecting tainted property as untainted).
- **PMLA Sec 5:** Provisional Attachment (Valid for 180 days).
- **PMLA Sec 12:** Record maintenance for Reporting Entities (5 years).
- **PMLA Sec 24:** Burden of Proof (Lies on the Accused).
- **Competition Act Sec 3:** Anti-competitive Agreements (Cartels - Strict Liability; Vertical - Rule of Reason).
- **Competition Act Sec 4:** Abuse of Dominant Position (Predatory pricing).
- **Competition Act Sec 6(2A):** Standstill period for Combinations (210 days).
- **SARFAESI Sec 13(2) & 13(4):** 60-day demand notice followed by measures to take possession.
- **SARFAESI Sec 18:** Appeal to DRAT (Minimum 50% or 25% pre-deposit mandatory).
- **Arbitration Sec 34:** Setting aside arbitral award (3 months + 30 days limit, Public Policy of India).

6. Master List of Important Forms & Rules

Ensure you quote these specific Rules and Forms correctly in your answers. Incorrect citations penalize your presentation.

Act / Regulation	Form Number	Purpose / Context
Companies Act, 2013	**DIR-12**	Particulars of appointment of Directors and the key managerial personnel and the changes among them.
	MR-1	Return of appointment of Managing Director, Whole Time Director, or Manager (to be filed within 60 days).
	MR-3	Format of the **Secretarial Audit Report** given by a Company Secretary in practice.
Companies Act (Compromises & Arrangements)	**CAA-11**	Notice of dissenting shareholders for Squeeze Out under Section 235.
	CAA-16	Declaration of Solvency required for Fast Track Merger under Section 233.
IBC, 2016	**Form B**	Proof of Claim submitted by Operational Creditors.
	Form C	Proof of Claim submitted by Financial Creditors.
FEMA, 1999	**Form FC-GPR**	Reporting of Foreign Direct Investment (FDI) issue of eligible instruments to non-residents (within 30 days).
	Form FC / OPI	Reporting of Overseas Direct Investment (ODI) / Overseas Portfolio Investment.

Key Delegated Legislations (Rules) to Quote:

- **Companies (Meetings of Board and its Powers) Rules, 2014** *(For Audit Committee, RPT limits)*
- **Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014** *(For sitting fees, KMP limits)*
- **Foreign Exchange Management (Current Account Transactions) Rules, 2000** *(For LRS limits, Schedules I, II, III)*
- **Foreign Exchange Management (Non-debt Instruments) Rules, 2019** *(For FDI prohibited sectors, immovable property by NRIs)*
- **Foreign Exchange Management (Overseas Investment) Rules, 2022** *(For ODI 400% net worth limits, Round-tripping bans)*

- **Foreign Exchange (Compounding Proceedings) Rules, 2000** *(For 180-day compounding orders, 15-day payment windows)*

> **Final Advice for the Examination:**
> Corporate and Economic Laws requires a cool head and analytical precision. Read the last line of the question first to understand what is being asked, then read the facts. Stick to the law, back it up with the correct section number, and write clearly. **You are ready. Best of luck for December 2026!**

--- END OF PART 9 (BONUS SECTION) ---

This concludes the complete master compendium for CMA Final Paper 13.