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SUPPLEMENT PROFESSIONAL PROGRAMME (NEW SYLLABUS)

for

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RESOLUTION OF CORPORATE DISPUTES, NON-COMPLIANCES & REMEDIES

MODULE 2

PAPER 6

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Lesson 2 - Corporate Disputes

1) Section 9 of the Companies (Amendment) Act, 2020 amended Section 56(6) of the Companies Act, 2013 w.r.t. Transfer and Transmission of Securities. w.e.f. December 21, 2020 Section 56(6)

Old Penal Provision

Where any default is made in complying with the provisions of sub-sections (1) to (5) of Section 56 of the Companies Act, 2013 w.r.t. provisions of the Transfer and Transmission of Securities, the company shall be punishable with fine which shall not be less than ₹ 25000 but which may extend to ₹ 5 lakh and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 1 lakh.

New Penal Provision

Where any default is made in complying with the provisions of sub-sections (1) to (5) of Section 56 of the Companies Act, 2013 w.r.t. the provisions of Transfer and Transmission of Securities, the company and every officer of the company who is in default shall be liable to a penalty of ₹ 50000.

Details of Changes:

Reduction in amount of monetary Penalty.

For more details:

http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

2) Section 10 of the Companies (Amendment) Act, 2020 omitted Section 59(5) of the Companies Act, 2013 w.r.t. Rectification of Register of Members. w.e.f. December 21, 2020 Section 59(5)

Old Penal Provision

If any default is made in complying with the order of the Tribunal under Section 59 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 5 lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 3 lakhs, or with both.

Details of changes:

Section 59(5) of the Companies Act, 2013 w.r.t. penal provisions for default in complying with the order of NCLT relating to rectification of register of members has been omitted.

For more details:

http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 4 - Fraud under Companies Act, 2013 and Indian Penal Code, 1860

1) Section 30 of the Companies (Amendment) Act, 2020 amends Section 143(15) of the Companies Act, 2013 w.r.t. Powers and Duties of Auditors and Auditing Standards w.e.f. December 21, 2020

Section 143(15)

Old Penal Provision

If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12) of Section 143 of Companies Act, 2013, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

New Penal Provision

If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12) of Section 143, he shall,—

- (a) in case of a listed company, be liable to a penalty of five lakh rupees; and
- (b) in case of any other company, be liable to a penalty of one lakh rupees.

Details of the Change

Penalties for auditor, cost accountant, or company secretary in practice who does not comply with the provision of 143(12) related to reporting of fraud are fixed.

For more details:

http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

2) Securities Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2003, Dated October 19, 2020

In regulation 4, in sub-regulation (1), the following Explanation shall be inserted, namely:—

“Explanation.—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of

that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.”

Details of the Change

Regulation 4(1) of Securities Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 provides that no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets. An explanation has been added to the said regulation for explaining deemed manipulative, fraudulent and an unfair trade practice in the securities market.

For more details:

https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-prohibition-of-fraudulent-and-unfair-trade-practices-relating-to-securities-market-second-amendment-regulations-2020_47963.html

Lesson 5 - Regulatory Action

1) Securities Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2003 Dated October 19, 2020

In regulation 4, in sub-regulation (1), the following Explanation shall be inserted, namely:–

“Explanation.—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.”

Details of the Change

Regulation 4(1) of Securities Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 provides that no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets. An explanation has been added to the said regulation for explaining deemed manipulative, fraudulent and an unfair trade practice in the securities market.

For more details:

https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-prohibition-of-fraudulent-and-unfair-trade-practices-relating-to-securities-market-second-amendment-regulations-2020_47963.html

2) Section 33 read with Part X of the second schedule of International Financial Services Centres Authority Act, 2019 inserts section 44A of Foreign Exchange Management Act, 1999 w.e.f. October 1, 2020

Section 44A of Foreign Exchange Management Act, 1999

New provision

Powers of Reserve Bank not to apply to International Financial Services Centre.—Notwithstanding anything contained in any other law for the time being in force, the powers exercisable by the Reserve Bank under this Act,— (a) shall not extend to an International Financial Services Centre set up under sub-section (1) of section 18 of the Special Economic Zones Act, 2005 (28 of 2005); (b) shall be exercisable by the International Financial Services Centres

Authority established under sub-section (1) of section 4 of the International Financial Services Centres Authority Act, 2019, in so far as regulation of financial products, financial services and financial institutions that are permitted in the International Financial Services Centres are concerned.

Details of Change

By virtue of section 33 of International Financial Services Centres Authority Act, 2019, section 44A is inserted in Foreign Exchange Management Act, 1999 excluding the Powers exercisable by Reserve Bank of India under Foreign Exchange Management Act, 1999 for International Financial Services Centre and entrusting the powers to International Financial Services Centres Authority in so far as regulation of financial products, financial services and financial institutions that are permitted in the International Financial Services Centres.

For more details:

www.egazette.nic.in/WriteReadData/2019/214809.pdf

3) Section 4 (XIX) of the Taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020 amends proviso to Section 133A(6) of Income-Tax Act, 1961 Dated September 29, 2020

Proviso to Section 133A(6) of Income Tax Act, 1961

New Provision

Provided that no action under this section shall be taken by an income-tax authority without the approval of the Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner.

Old Provision

Provided that—

(a) in a case where the information has been received from such authority, as may be prescribed, no action under sub-section (1) shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner, as the case may be;

(b) in any other case, no action under sub-section (1) shall be taken by a Joint Director or a Joint Commissioner or an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Director or the Commissioner, as the case may be."

Details of Change

By virtue of the amendment, the powers of approval under section 133A of Income Tax Act, 1961 is delegated to Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner which were earlier with Joint Director or the Joint Commissioner/ Director or the Commissioner as the case may be.

For more details

www.egazette.nic.in/WriteReadData/2020/222110.pdf

4) Section 4 (XX) of the Taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020 amends proviso to Section 133C (2) and inserts section 133C (4) in Income-Tax Act, 1961 Dated September 29, 2020

Section 133C (2) of Income Tax Act, 1961

Old Provision

133C (2) Where any information or document has been received in response to a notice issued under sub-section (1), the prescribed income-tax authority may process such information or document and make available the outcome of such processing to the Assessing Officer.

New Provision

133(2) Where any information or document has been received in response to a notice issued under sub-section (1), the prescribed income-tax authority may process and utilise such information and document in accordance with the scheme notified under sub-section (3) or the provisions of section 135A].

Details of Change

Any information or document received in response to a notice issued under section 133C(1), the prescribed income-tax authority may process and utilise such information and document in accordance with the scheme notified under sub-section (3) or the provisions of section 135A which is related to Faceless collection of information. Section 135A provides for ensuring imparting greater efficiency, transparency and accountability.

Section 133C (4) of Income Tax Act, 1961

New Provision

133 (4) The scheme made under sub-section (3) shall cease to have effect from the date on which the scheme notified under section 135A in respect of this section comes into effect.]

Details of Change

The scheme made under section 133A (3) shall cease to have effect from the date on which the scheme notified under section 135A in respect to section 133A comes into effect.

For more details:

www.egazette.nic.in/WriteReadData/2020/222110.pdf

5) Section 4 (XXI) of the Taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020 inserts Section 135A in Income-Tax Act, 1961 Dated September 29, 2020

New provision

Section 135A. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of calling for information under section 133, collecting certain information under section 133B, or calling for information by prescribed income-tax authority under section 133C, or exercise of power to inspect register of companies under section 134, or exercise of power of Assessing Officer under section 135 so as to impart greater efficiency, transparency and accountability by—

- (a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;
- (c) introducing a team-based exercise of powers, including to call for, or collect, or process, or utilise, the information, with dynamic jurisdiction.

(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall

not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Details of Change

Section 135A is inserted w.e.f. 1st November, 2020 in Income Tax Act, 1961 so as to impart greater efficiency, transparency and accountability by (a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible, optimising utilisation of the resources through economies of scale and functional specialization and (c) introducing a team-based exercise of powers, including to call for, or collect, or process, or utilise, the information, with dynamic jurisdiction.

For more details:

www.egazette.nic.in/WriteReadData/2020/222110.pdf

Lesson 6 - Adjudication, Prosecutions, Offences and Penalties

1) Decriminalization pursuant to Companies (Amendment) Act, 2020 w.e.f. December 21, 2020

Companies (Amendment) Act, 2020, which is notified on 28th September, 2020, decriminalize certain offences and reduced penalties for many provisions under Companies Act, 2013. The provisions of the said amendment act shall come into effect from the date to be notified. MCA has notified 45 section to come into force w.e.f. 21st December, 2021. Due to changes more offences are now compoundable by regional director and many non-compoundable offence can be compounded.

For more details: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
www.mca.gov.in/Ministry/pdf/CommencementNotification_24122020.pdf

2) Section 65 of Companies (Amendment) Act, 2020 added proviso to section 454 of Companies Act, 2013 w.e.f. December 21, 2020

Section 454

Old provision

454. (1) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner provided by The Companies (Adjudication of Penalties) Rules, 2014.

(2) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1).

(3) The adjudicating officer may, by an order-

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.

New Provision

454. (1) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner provided by the Companies (Adjudication of Penalties) Rules, 2014.

(2) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1).

(3) The adjudicating officer may, by an order-

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.

Provided that in case the default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub-section (2) of section 137 and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.

Details of the Change

Proviso to section 454(1) of the Companies Act, 2013 has been added for rectifying the default under section 92(4) or 137(2) either prior to, or within thirty days of, the issue of the notice by the adjudicating officer.

For more details:

http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

3) Section 63 of the Companies (Amendment) Act, 2020 amends Section 450 of the Companies Act, 2013 w.r.t. Punishment where no specific penalty or punishment is provided w.e.f. December 21, 2020

Section 450

Old Penal Provision

If a company or any officer of a company or any other person contravenes any of the provisions of Companies Act, 2013 or the rules made thereunder, or any condition, limitation or restriction

subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

New Penal Provision

If a company or any officer of a company or any other person contravenes any of the provisions of Companies Act, 2013 or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

Details of the change

The penalty provisions under section 450 of Companies Act, 2013, which provides for the punishment where no specific penalty or punishment is provided, is relaxed by providing the maximum amount of Penalty.

For more details:

http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

4) Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2020 Dated July 22, 2020

The Securities and Exchange Board of India amended the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018. They shall come into force on the date of their publication in the Official Gazette.

(i) Regulation 15(2)

Old Regulation

Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -

(a) remit the settlement amount forming part of the settlement terms, not later than fifteen calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by fifteen calendar days:

Explanation. – Remittance of settlement amount shall be done by way of a demand draft drawn in favour of 'Securities and Exchange Board of India' payable at Mumbai or by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised mode of payment.

New Regulation

Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -

(a) remit the settlement amount forming part of the settlement terms, not later than thirty calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by sixty calendar days, only after receipt of an application seeking extension of time within thirty days from the date of receipt of notice of demand:

Explanation. – Remittance of settlement amount shall be done by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised electronic mode of payment.

Details of change

(i) The time limit for remit the settlement amount forming part of the settlement terms is increased.

(ii) Chapter VIII relating to notice of settlement is omitted.

(iii) In regulation 34, sub regulation 4 is inserted are under, -

Notwithstanding the omission of Chapter VIII, a Settlement Notice issued under regulation 18, shall be dealt with as if the Chapter VIII is still in force and continue to be dealt with accordingly.”

(iv) Last row of Table VI of Chapter VI of Schedule II and Table X of Chapter VI of Schedule II is substituted.

For more details:

https://www.sebi.gov.in/legal/regulations/jul-2020/securities-and-exchange-board-of-india-settlement-proceedings-amendment-regulations-2020_47147.html

Lesson 7 - Relief and Remedies

1) Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2020 Dated July 22, 2020

The Securities and Exchange Board of India amended the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018. They shall come into force on the date of their publication in the Official Gazette.

(i) Regulation 15(2)

Old Regulation

Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -

(a) remit the settlement amount forming part of the settlement terms, not later than fifteen calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by fifteen calendar days:

Explanation. – Remittance of settlement amount shall be done by way of a demand draft drawn in favour of 'Securities and Exchange Board of India' payable at Mumbai or by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised mode of payment.

New Regulation

Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -

(a) remit the settlement amount forming part of the settlement terms, not later than thirty calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by sixty calendar days, only after receipt of an application seeking extension of time within thirty days from the date of receipt of notice of demand:

Explanation. – Remittance of settlement amount shall be done by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised electronic mode of payment.

Details of change

(i) The time limit for remit the settlement amount forming part of the settlement terms is increased.

(ii) Chapter VIII relating to notice of settlement is omitted.

(iii) In regulation 34, sub regulation 4 is inserted are under, -

Notwithstanding the omission of Chapter VIII, a Settlement Notice issued under regulation 18, shall be dealt with as if the Chapter VIII is still in force and continue to be dealt with accordingly. ”

(iv) Last row of Table VI of Chapter VI of Schedule II and Table X of Chapter VI of Schedule II is substituted.

For more details:

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