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Answer Paper	
Corporate & Economic Laws	Duration: 75
Details: Test – 5	Marks: 40

**Instructions:**

- All the questions are compulsory
- Properly mention test number and page number on your answer sheet, Try to upload sheets in arranged manner.
- In case of multiple choice questions, mention option number only Working notes are compulsory wherever required in support of your solution
- Do not copy any solution from any material. Attempt as much as you know to fairly judge your performance.

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**ANS-1**

(i) As per Section 2(j) of the FCRA, 2010, “foreign source” includes a society, club or other association or individual formed or registered outside India. Accordingly in the given case, amount (i.e., loan) received by M/s KG & Co., being a partnership firm not covered under the above provisions, from club registered in London for its business purpose is permissible.

(ii) As per Section 3 of the FCRA, 2010, no foreign contribution shall be accepted by any association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programs through any electronic mode, or any other electronic form as defined in the Information Technology Act, 2000 or any other mode of mass communication; Accordingly, Hello FM is not permitted to receive any fund from a foreign company.

(iii) As per the provisions of the Foreign Contribution (Regulation) Act, 2010, “foreign contribution” means the donation, delivery or transfer made by any foreign source, of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf; (This sum has been specified as Rs. 1,00,000/- currently).

In the given situation, Mr. Happy received the wrist watch (market value Rs. 25,000) as marriage anniversary gift from his uncle, a citizen of USA. Since, the value of the wrist watch is within the prescribed limit, hence, Mr. Happy is permitted to receive the article.

**(6 Marks)**

**ANS-2**

Section 6 of the Foreign Contribution (Regulation) Act, 2010 prescribes that no member of a Legislature shall while visiting any country accept, except with the prior permission of the Central Government for any foreign hospitality. Foreign Hospitality [as per section 2(m)] means

any offer not being a purely casual one, made in cash or kind by a foreign source for providing person with the costs of travel to any foreign country with free boarding lodging or medical treatment. Therefore, prior approval is required from Central Government for the medical expenses. Provided that it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which and the manner in which such hospitality was received by him.

As per Rule 7 of Foreign Contribution (Regulation) 2011, foreign hospitality may be received by member of Legislature in the following manner:

In case of emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within 1 month of such receipt giving full details including the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilized. Hence, Mr. Peter has to follow the above.

(5 Marks)

### **ANS-3**

The given problem is based on Section 9(1) of the Insolvency and Bankruptcy Code, 2016. According to the provision, after the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute, the operational creditor may file an application before the Adjudicating Authority for initiating corporate insolvency resolution process.

However, as per Section 8[2](a) of the Code, the corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor about existence of dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute.

Facts given states that the Dheeraj Constructions Private Limited on receipt of the demand notice, informed M/s TAS Constructions Private Limited (Operational Creditor) that through email dated 30th March, 2018, addressed the company and all its directors, of the dispute on the invoice and withholding of the payment till the settlement of the dispute

Hence, the requirement of Section 8, to bring to the notice of the operational creditor about an existence of dispute have been complied, anytime upto 10 days of Demand Notice.

So, the application of M/s TAS Constructions Private Limited (Operational Creditor) shall not be permitted under Section 9 of the Insolvency and Bankruptcy Code, 2016 as Dheeraj Construction Private Limited has complied the provisions of Section 8(2)(a) of the IBC, 2016

**(5 Marks)**

**ANS-4**

According to section 34 of the Insolvency and Bankruptcy Code, 2016, where the Adjudicating Authority passes an order for liquidation of the corporate debtor, the resolution professional appointed for the corporate insolvency resolution process, shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.

The Adjudicating Authority shall by order replace the resolution professional If-

(a) The resolution plan submitted by the resolution professional was rejected for failure to meet the requirements; or

(b) The Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing.

On rejection of resolution plan due to failure to meet the requirements, the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

The Board shall propose the name of another insolvency professional within ten days of the direction issued by the Adjudicating Authority.

The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

**Charge of fees for conduct of liquidation proceedings:** An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

**Payment of fees:** The fees for the conduct of the liquidation proceedings shall be paid to the liquidator from the proceeds of the liquidation estate.

(5 Marks)

#### **ANS-5**

Section 63 of the Arbitration and Conciliation Act, 1996 provides that

1. There shall be one conciliator unless the parties agree that there shall be two or three conciliators.
2. Where there is more than one conciliator, they ought, as a general rule, to act jointly.

Further Section 64, specifies, Procedure of Conciliation-once the conciliators have been appointed both parties are required to submit their statements in writing, supply documents and other evidence to the conciliator. The conciliator then provides a copy of the statements, documents and other evidence of one party to the other party .The conciliator is then required to encourage and assist parties to engage in discussions based on the information to arrive at a settlement.

**(5 Marks)**

**ANS-6**

As per the explanation 2 to the definition of the Foreign Contribution under the Act, the interest accrued on the foreign contribution deposited in any bank referred to in section 17(1) or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Further as per section 8 of the Act, every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution shall utilise such contribution for the purpose for which the contribution has been received.

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business, whereas speculative business includes investment in mutual fund XYZ Foundation cannot use the contribution as well as the interest component for the investment in Mutual Fund.

**(4 Marks)**



**ANS-7**

1. (b) Surya Ltd would be "foreign source" have foreign shareholding more than 50% of foreign company.

2. (b) The resolution passed for liquidation is not valid in law as it has not been approved by minimum of 66% of the voting shares of the financial creditors.

3. (d) No it cannot be admitted by the court, as the jurisdiction of court is ousted because of existence of a valid arbitration agreement

**(2×3 = 6 Marks)**

4. (c) Both the Statements are correct

5. (b) Participate and vote

6. (d) All the Statements are Correct

7. (c) Indian Rupees, purpose for which the foreign hospitality was utilized and the manner in which the foreign hospitality was utilized

**(1×4 = 4 Marks)**



