1. (a) As per section 53 of Insolvency and Bankruptcy Code, 2016, the proceeds from the sale of liquidation assets shall be distributed in the following order of priority:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (In Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Fees payable to Resolution Professional in full</td>
<td>75,000</td>
</tr>
<tr>
<td>(ii) Expenses incurred by the Resolution professional in running the business on going concern</td>
<td>25,000</td>
</tr>
<tr>
<td>(iii) Workmen salary outstanding for a period of 24 months (proportionate to 24 months only). The balance Rs. 60,000 is considered as remaining debts and dues and will be settled before preference shareholder/equity shareholder.</td>
<td>2,40,000</td>
</tr>
<tr>
<td>(iv) Secured creditor who has relinquished the security</td>
<td>5,00,000</td>
</tr>
<tr>
<td>(v) Unsecured Financial Creditors</td>
<td>4,00,000</td>
</tr>
<tr>
<td>(vi) Income- tax payable with in the period of 2 years</td>
<td>50,000</td>
</tr>
<tr>
<td>(vii) Cess to State Government payable with in a period of one year</td>
<td>20,000</td>
</tr>
<tr>
<td>(viii) Balance amount in workmen salary</td>
<td>60,000</td>
</tr>
<tr>
<td>Total distribution in the above priority</td>
<td>13,70,000</td>
</tr>
<tr>
<td>Amount realized from the sale of liquidation of assets</td>
<td>14,00,000</td>
</tr>
<tr>
<td>Balance available to Equity share holder on pro rata basis</td>
<td>30,000</td>
</tr>
</tbody>
</table>

(b) Registration of offer of Schemes involving transfer of shares [Section 238 of the Companies Act, 2013]

(1) Registration of circular/ offer involving transfer of shares: In relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company under section 235,—

(a) every circular containing such offer and recommendation to the members of the transferee company by its directors to accept such offer shall be accompanied by such information and in such manner as prescribed in Rule 28;

(b) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available; and

(c) every such circular shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered.

The Registrar may refuse, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within thirty days of the application.

(2) Appeal against the order of the registrar: An appeal shall lie to the Tribunal against an order of the Registrar refusing to register any circular under sub-section (1).
(3) **In case of failure of registration:** The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

(c) **Remittance of Foreign Exchange for studies abroad:** Foreign exchange may be released for studies abroad up to a limit of US $ 2,50,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case since US $ 1,20,000 is the drawal of foreign exchange, so permission of the RBI is not required.

(B) **Gift remittance exceeding US $ 10,000:** Under the provisions of Section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US $ 2,50,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, so there is no need for any permission from the RBI.

(d) (i) **In accordance with the provisions of the Companies Act, 2013, as contained under section 129(3) and (4):**

Where a company has one or more subsidiaries, it shall, in addition to its own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own. The consolidated financial statements shall also be laid before the AGM of the company along with the laying of its own financial statement. The company shall also attach a separate statement containing the salient features of the financial statement of its subsidiaries in Form AOC-1. For the purpose of consolidated financial statements, ‘subsidiaries’ shall include associate company and joint venture.

(ii) If the financial statements of a company do not comply with the accounting standards, the company shall disclose in its financial statements the following viz.

(a) The deviation from the accounting standards,

(b) The reasons for such deviation, and

(c) The financial effects, if any, arising out of such deviation.

2. (a) **Pricing of public issue of equity shares are contained in SEBI (ICDR) Regulations, 2009 - Regulations 28 to 31, Part II of Chapter III**

**Pricing**

28. (1) An issuer may determine the price of specified securities in consultation with the lead merchant banker or through the book building process.

(2) An issuer may determine the coupon rate and conversion price of convertible debt instruments in consultation with the lead merchant banker or through the book building process.

(3) The issuer shall undertake the book building process in a manner specified in Schedule XI.

**Differential pricing**

29. An issuer may offer specified securities at different prices, subject to the following:

(a) retail individual investors or retail individual shareholders or employees of the issuer entitled for reservation made under regulation 42 making an application for specified
securities of value not more than two lakh rupees, may be offered specified securities at a price lower than the price at which net offer is made to other categories of applicants:

Provided that such difference shall not be more than ten per cent. of the price at which specified securities are offered to other categories of applicants;

(b) in case of a book built issue, the price of the specified securities offered to an anchor investor shall not be lower than the price offered to other applicants;

(c) in case of a composite issue, the price of the specified securities offered in the public issue may be different from the price offered in rights issue and justification for such price difference shall be given in the offer document.

(d) In case the issuer opts for the alternate method of book building in terms of Part D of Schedule XI, the issuer may offer specified securities to its employees at a price lower than the floor price:

Provided that the difference between the floor price and the price at which specified securities are offered to employees shall not be more than ten per cent. of the floor price.

Price and price band

30. (1) The issuer may mention a price or price band in the draft prospectus (in case of a fixed price issue) and floor price or price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before registering the prospectus with the Registrar of Companies:

Provided that the prospectus registered with the Registrar of Companies shall contain only one price or the specific coupon rate, as the case may be.

(2) If the floor price or price band is not mentioned in the red herring prospectus, the issuer shall announce the floor price or price band at least five working days before the opening of the bid (in case of an initial public offer) and at least one working day before the opening of the bid (in case of a further public offer), in all the newspapers in which the pre issue advertisement was released.

(3) The announcement referred to in sub-regulation (2) shall contain relevant financial ratios computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section titled “basis of issue price” in the prospectus.

(3A) The announcement referred to in sub-regulation (2) and the relevant financial ratios referred to in sub-regulation (3) shall be disclosed on the websites of those stock exchanges where the securities are proposed to be listed and shall also be pre-filled in the application forms available on the websites of the stock exchanges.

(4) The cap on the price band shall be less than or equal to one hundred and twenty per cent of the floor price.

(5) The floor price or the final price shall not be less than the face value of the specified securities.

Explanation: For the purposes of sub-regulation (4), the “cap on the price band” includes cap on the coupon rate in case of convertible debt instruments.

Face value of equity shares.

31. (1) Subject to the provisions of the Companies Act, 1956, the Act and these regulations, an issuer making an initial public offer may determine the face value of the equity shares in the following manner:

(a) if the issue price per equity share is five hundred rupees or more, the issuer shall have the option to determine the face value at less than ten rupees per equity share: Provided that the face value shall not be less than one rupee per equity share.
share;

(b) if the issue price per equity share is less than five hundred rupees, the face value of the equity shares shall be ten rupees per equity share:

Provided that nothing contained in this sub-regulation shall apply to initial public offer made by any government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.

(2) The disclosure about the face value of equity shares (including the statement about the issue price being “X" times of the face value) shall be made in the advertisements, offer documents and application forms in identical font size as that of issue price or price band.

Explanation: For the purposes of this regulation, the term “infrastructure sector” includes the facilities or services as specified in Schedule X.

1(b) According to Rule 4(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors:

(1) the Public Companies having paid up share capital of 10 crore rupees or more; or
(2) the Public Companies having turnover of 100 crore rupees or more; or
(3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

In the present case, XYZ Limited is an unlisted public company having a paid-up capital of Rs. 20 crores as on 31st March, 2018 and a turnover of Rs. 150 crores during the year ended 31st March, 2018. Thus, as per the Companies (Appointment and Qualification of Directors) Rules, 2014, XYZ Limited shall have at least 2 directors as independent directors.

(ii) Where a company ceases to fulfil any of 3 conditions for three consecutive years, it shall not be required to comply with these provisions (i.e., related to appointment of Independent directors) until such time as it meets any of such conditions.

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

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

Accordingly, XYZ, a dormant company does not require to fulfil the conditions stated in Rule 4(1) for appointment of Independent Directors.

3. (a) (i) As per the given facts, Mr. Khurana, a director of XYZ Ltd., was also a member of a private company with which the company entered into contract for the purchase of the raw material. In terms of section 2(76) of the Companies Act, 2013, XYZ Ltd. is a related party to a such private company. However, as per section 188(1) of the Act, no company shall enter into any contract or arrangement with a related party with respect to the transaction related to the sale, purchase or supply of any goods or materials or made through an appointment of any agent for purchase or sale of goods, materials, services or property, except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such

1 The answer is based on the amended rule Inserted by the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 Dated 5th July, 2017.
conditions as given in rule 15 of the *Companies (Meetings of Board and its Powers) Rules, 2014*.

However, no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as prescribed in Rule 15(3) of the *Companies (Meetings of Board and its Powers) Rules, 2014*, shall be entered into except with the prior approval of the company by a resolution. [First proviso to section 188(1)]

A company shall not enter into transaction/s related sale, purchase or supply of any goods or materials, directly or through appointment of agent, where the transaction or transactions to be entered into is amounting to 10% or more of the turnover of the company or rupees 100 crore, whichever is lower, except with the prior approval of the company by a resolution.

Since in the given case, XYZ Ltd. has turnover of Rs. 500 crore, here the transaction is amounting to more than 10% of the turnover i.e., 500crx10/100 = 50 cr, but without seeking prior approval of the company by a resolution.

So, in terms of the above provision, this contract is of voidable nature at the option of the Board, or as the case may be of the shareholders according to section 188(3) of the Companies Act, 2013.

(ii) **In case of contravention of Section 188(1):** 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 as required under section 188(1), and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within 3 months from the date on which such contract or arrangement was entered into and further, if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

**Company may proceed to recover loss in contravention of the provisions of this section:** Section 188 (4) provides that it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

**Penalty:** Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees.

(iii) **Appointment of Director under Section 164:** A person shall not be eligible for appointment as a director of a company, where he has been convicted of the offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years.

In the given instance, Mr. Khurana was not convicted, only levied with the penalty, against the offence dealt with related party transactions under section 188, so he is eligible and can be appointed as a director in the PQR Ltd.

(b) Under section 139(8) of the Companies Act, 2013, any casual vacancy in the office of an auditor shall in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.
Therefore, in the present case, as the auditor has resigned, the casual vacancy so created can be filled up by the Board appointing Mr. Albert. However, the appointment of Mr. Albert must be approved by the company by passing of an ordinary resolution at a general meeting of the company which must be convened by the Board within 3 months of the recommendation of the Board.

Mr. Albert will be entitled to hold office till the conclusion of the next Annual General Meeting.

Under section 140(1) of the Companies Act, 2013, the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with rule 7 of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term:

(a) The application to the Central Government for removal of auditor shall made in Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

(b) The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

(c) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

4. (a) Power of RBI to remove director: Under section 36AA of the Banking Regulation Act, 1949, RBI can terminate any Chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when RBI is of the opinion that conduct of such persons is detrimental to the interest of the depositors or for securing proper management of the banking company. Before such termination concerned person should be given opportunity to be heard of. Such terminated officials can make appeal to the Central Govt. within 30 days from the date of communication of such termination order. The decision of the Central Government cannot be called into question. In case an order is issued pursuant to this section the concerned person shall cease to hold his office for a period of not exceeding 5 years as may be specified in the order. Contravention of the above provision shall be punishable with a fine, which may extent to Rs. 250 per day.

Any such order shall be valid for a period not exceeding three years or such further periods of not exceeding three years at a time as RBI may specify.

Under section 36AB: RBI is empowered to appoint additional Directors for the banking company with effect from the date to be specified in the order, in the interest of the bank or that of depositors. Such additional directors shall hold office for a period not exceeding three years or such further periods not exceeding three years at a time.

(ii) Section 11 of the Securities Contracts (Regulation) Act, 1956 deals with the powers of the Central Government to supersede the Governing body of a recognized Stock Exchange. The Central Government may serve on a governing body a written notice specifying the reasons and after giving an opportunity to the governing body to be heard, may, by notification in the Official Gazette, declare the governing body as superseded. The Central Government after superseding the governing body may appoint any person or persons to exercise and perform all the powers and duties of governing body. It may also appoint one of such nominees as Chairman.
(b) As per the given instance, the act of JIPL to remove Mr. B. Dutt as a Managing director of FPRPL and pressurizing him to sell his shares much below the fair market price is an act of oppression and violations of Section 241 and 242 of the Companies Act, 2013. Mr. B. Dutt was not given prior notice of board meeting and no chance to disprove the false allegations made against him.

According to Section 242(2), the Tribunal without prejudice to the generality of the powers under sub-section (1) can order for -

a. the regulation of conduct of affairs of the company in future;

b. the purchase of shares or interests of any members of the company by other members thereof or by the company;

c. in the case of a purchase of its shares by the company, the consequent reduction of its share capital;

d. restrictions on the transfer or allotment of the shares of the company;

e. the termination, setting aside or modification, of any agreement entered between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

f. the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

g. the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

h. removal of the managing director, manager or any of the directors of the company;

i. recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

j. the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

k. appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

l. imposition of costs as may be deemed fit by the Tribunal;

m. Any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

The above mentioned case, falls within the purview of the Section 241 and 242 of the Companies Act 2013, ensuring that the transfer of shares to the company (JIPL) by the member will not effect to the interests of the company or any of its shareholders. It gives broad powers to the Tribunal, leading to the establishment of its jurisdiction, even when a separate JVA exist.

Tribunal can pass an order for purchase of shares/interest of any members of the company by other members thereof or by the company if it thinks fit.

Under Section 242(2) of the Companies Act, 2013, Mr. B. Dutt can be reappointed as the Managing director of the company by the Tribunal and it can also issue orders for the future conduct of the company along with provision of just and equitable relief to the applicant (i.e. Mr. B Dutt).
5. (a) (i) As per section 411 of the Companies Act, 2013 the qualification of chairperson of NCLAT shall be a person who is or has been a judge of the Supreme Court or the Chief Justice of a High Court. In the given case, chairperson is a judge and not a chief justice of a High Court, so his appointment is invalid. However, Section 431 of the Companies Act, 2013 provides of the provisions that no act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be.

Accordingly, the act or proceeding of the Appellate Tribunal (NCLAT) shall not be invalid on the basis of defect in the constitution of the Appellate Tribunal.

(ii) Specimen Board Resolution: Purchase of Equity Shares

Resolution passed at the meeting of the board of directors of XYZ Limited held at its registered office situated at _______ on ______ (day) at _____ A.M.

"Resolved unanimously that pursuant to provisions of Section 186(2) of the Companies Act, 2013, the company be and is hereby authorized to purchase 35,000 equity shares of Rs. 100 each of PQR Limited, the investment in addition to other investments made to date in the aggregate being within the limits prescribed under the said section."

"Resolved further that Mr. ......................, a Director of the company, be and is hereby authorised to sign /execute the necessary documents in this connection."

Sd/-

Board of Directors

XYZ Limited

(b) (i) Interim Dividend: According to section 123(3) of the Companies Act, 2013, The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend. (Amended through the Companies (Amendment) Act, 2017).

However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the instant case, Interim dividend by PET Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. (12+15+18)/3 = 45/3 =15%]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

(ii) (a) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

(b) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.
In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

6. (a) (i) The official liquidator can invoke the provisions contained in Section 328 of the Companies Act, 2013 to recover the sale of assets of the company. According to Section 328, if the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

Since in the present case, the sale of immovable property took place on 15th September, 2017 and the company went into liquidation on an application filed on 10th February, 2018 i.e., within 6 months of making winding up application and such transfer of property has resulted a loss to the company.

The official liquidator will be able to succeed in proving the case under Section 328 by way of fraudulent preference as the property was sold to a Vansh (Pvt.) company, a creditor in which the son of the ex-managing director was interested.

Hence, the transaction made will be regarded as invalid and restore the position of the company as if no transfer of immovable property has been made.

(ii) Determination of rights and liabilities of fraudulently preferred persons: According to section 331 of the Companies Act, 2013, where a company is being wound up and anything made, taken or done after the commencement of this Act is invalid under section 328 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company’s debt, then, without prejudice to any rights or liabilities arising, apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as a surety for the debt,-

• to the extent of the mortgage or charge on the property, or
• the value of his interest,

Whichever is less.

(b) The given problem will be dealt with section 212 read with the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017. According to section 212(1), where Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

As per the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017, where SFIO, investigating into the affairs of a company has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person; Provided that in case of an arrest being made by Additional Director or Assistant Director, the prior written approval of the Director SFIO shall be obtained.

Where an arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government. Provided that the intimation of such arrest shall also be given to the Managing Director or the person in-charge of the affairs of the Government Company and where the person...
arrested is the Managing Director or person in-charge of the Government Company, to the Secretary of the administrative ministry concerned, by the arresting officer.

In the given case, XYZ, is a government company and on investigation by SFIO, Mr. Saheb is found guilty for an offence committed under the Companies Act, 2013. SFIO, shall arrest Mr. Saheb with prior written approval of the Central Government. Since here the person arrested is the Managing Director of the Government Company, intimation of such arrest shall also be given to the Secretary of the concerned administrative ministry by the SFIO.

7. (a) As per Regulation 3 of Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor. However such an Insolvency professional who is appointed as an resolution professional shall not be an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last three financial years, subject to compliance of other requirements.

In the given instance, Mr. Ramlal, was appointed as Resolution professional for a corporate insolvency process initiated against the Monotech Ltd. During the process, it was discovered that Mr. Ramlal is a partner of a firm M/s supervision and company, which has made transaction of 11% of the gross turnover of the firm in the financial year 2017-2018 with Monotech Ltd.

Accordingly, Mr. Ramlal being a partner of the Firm had made a transaction of more than 10% of the gross turnover of the firm in the previous financial year 2017-2018. So his appointment as resolution professional against Monotech Ltd for initiation of CIRP, is not valid.

(b) (i) Preamble: The preamble expresses the scope, object and purpose of the Act more comprehensively than the Long Title. The preamble may recite the ground and the cause of making a statute and the evil which is sought to be remedied by it.

Like the Long Tile, the preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the preamble does not over-ride the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction, e.g. where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

(ii) Use of Foreign Decisions: Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

(c) As per the Prevention of money Laundering Act, 2002, 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 (Section 3).
“Proceeds of crime” means 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 [Section 2(1)(u)].

Every Scheduled Offence is a Predicate Offence. The occurrence of the scheduled Offence is a pre requisite for initiating investigation into the offence of money laundering.

In the given case, Mr. X assigned Ali to deliver counterfeit currency notes to be given to his friends in Hongkong, which is an offence falling within the purview of scheduled offence in Part A of the PMLA, 2002 under section 489B of the IPC. This section deals with the using as genuine, forged or counterfeit currency-notes or bank-notes. According to the section whoever sell to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be liable under the Prevention of Money Laundering Act.

Hence, Ali, Mr. X and his friends in Hongkong, all are said to be liable under the Prevention of Money Laundering Act.

(d) Agreement

'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. [Section 2(b)].

In view of the above definition of 'agreement', an understanding reached by the cement manufacturers to control the price of cement will be an 'agreement' within the meaning of section 2(b) of the Competition Act, 2002 even though the understanding is not in writing and it is not intended to be enforceable by legal proceedings.

(e) The Code provides for establishment of insolvency professionals agencies (IPA) to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy Code 2016 and read with regulations.

Principles governing registration of Insolvency Professional Agency

- to promote the professional development of and regulation of insolvency professionals
- to promote the services of competent insolvency professionals to cater to the needs of debtors, creditors and such other persons as may be specified
- to promote good professional and ethical conduct amongst insolvency professionals
- to protect the interests of debtors, creditors and such other persons as may be specified
- to promote the growth of insolvency professional agencies for the effective resolution of insolvency and bankruptcy processes under this Code.