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BEYOND GOVERNANCE

Case Study

In order to make the Chartered Secretary Journal (CSJ) more interactive for the members and students, the Case Study section has been introduced from April issue. Each Case Study is followed by question(s) which are to be solved by member(s)/student(s). The answer(s) are to be sent to cs.journal@icsi.edu latest by 25th of each month.

The answer(s) will be reviewed by a Panel of reviewer(s). The winner will be given:

- (i) Certificate of Appreciation.
- (ii) His/Her name will be published in the next issue of the Journal.
- (iii) He/She will be awarded cash award of ₹ 2,500.

Crossword

A new section 'Crossword' containing terminologies/concepts from Companies Act, IBC, NCLT and such related areas of profession is introduced. Members/students are to send the answers of Crossword to cs.journal@icsi.edu latest by 25th of each month.

- The answer(s) will be published in the next issue of CSJ.
- The winners will be selected randomly.
- The name of three winners will be published in the next issue of CSJ.



CASE STUDY

This case study has been divided in two parts-Part A and Part B

M/s ABC Limited (hereinafter referred as “the reporting company”) is a company incorporated under the Companies Act, 2013 (hereinafter referred as “the Act”) having registered office in Delhi. In order to ensure compliance in accordance with the provisions of section 90 of the Companies Act, 2013 dealing with declaration w.r.t. “Significant Beneficial Owner” (“SBO”), Mr. C, Company Secretary of the company, went through the Register of Members. He found the cases to whom notice for filing BEN-1 shall be served as sub-section (4A) of section 90 of the Act mandates every company to take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section. In exercise of the obligation cast upon the company under sub-section 5 of section 90 of the Companies Act, 2013, Notice (Form BEN-4, Rule 6 of SBO Rules), for the same was served to them by Mr. C for seeking information w.r.t. Significant Beneficial Ownership for the shares held in the reporting company.

Part 1

Case 1: Mr. A is holding 12% equity shares in the reporting company. He is holding majority stake (60%) in XYZ Limited which is holding 5% share in the reporting company. Mr. A argues that he needs not file declaration of SBO as Mr. A’s direct holding is not a part of SBO. Moreover, the holdings of the XYZ Limited in the

reporting company is less than 10%. Therefore, he does not qualify for SBO testing under section 90 of the Act.

Decide

Case 2:

There is a corporate shareholder LMN Limited which is holding 10% equity shareholdings in the reporting company. Mr. R is holding 40% equity in LMN Limited. Mr. R is also the preference shareholder of LMN Limited holding 50% Compulsory Convertible Preference Shares in it. These preference shareholders will entitle him to 20% equity shares in LMN Limited on conversion.

On receiving notice for filing declaration in FORM BEN-1, it was replied that the provisions are not applicable to him as he is not majority stakeholder in LMN Limited, a corporate member of the reporting company. His preference shareholding cannot be counted for the purpose of SBO till the time of their conversion into equity shares.

Decide

Case 3

FTQ Limited is the corporate shareholder of the reporting company holding 13% equity stake in it. Mr. S holds 80% Optionally Convertible Debentures in FTQ Limited which if converted will entitle him to majority equity stake in FTQ Limited. Mr. S argues that provisions

of SBO are not applicable to optionally convertible debentures.

Decide

Part 2

Case

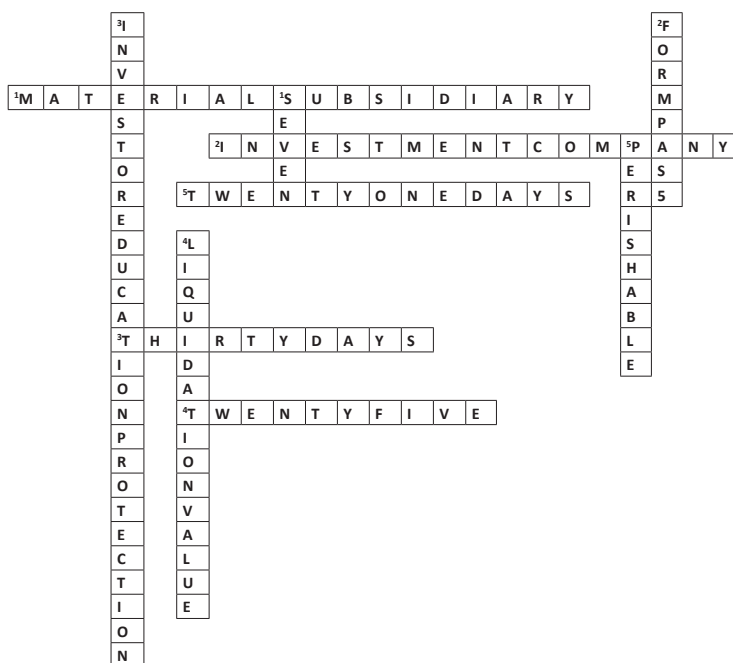
On their failure to file declaration of SBO in FORM BEN-1, the company secretary filed a petition under section 90(7) of the Companies Act, 2013. He applied to the Tribunal for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares as Mr R and Mr A failed to give the reporting company information required by the notice (Form BEN-4) within the time specified therein; An application was filed by Mr. R and Mr. A under Rule 11 of the NCLT Rules, 2016. It was stated in the application that the company alone is empowered to apply to this bench under section 90(7) of the Companies Act, 2013. It was submitted that the company acts through its Board of Directors and in the present case the company secretary

has not taken any approval from the Board of Directors to file the present petition. The applicant further goes on to state that there is no Board resolution nor has any delegated authority to present the petition in question. It was also submitted that the company acts through the Board of Directors and section 179 of the Companies Act, 2013 empowers the Board of Directors to exercise all such powers and to do all such acts and things that a company is authorized to exercise and do. Therefore, applicant (Mr R and Mr A) sought to declare the petition as not maintainable and dismiss the same at the outset as the same has been filed without authority under law.

Decide

Disclaimer: The case study has been framed from the facts and figures available in the public domain with some modifications/assumptions so as to enable members to apply their professional skills to answer the same and hide the identity of the case. Author is not to be held liable for any resemblance of the facts and figures with any case.

CROSSWORD PUZZLE – OCTOBER 2023 ANSWERS



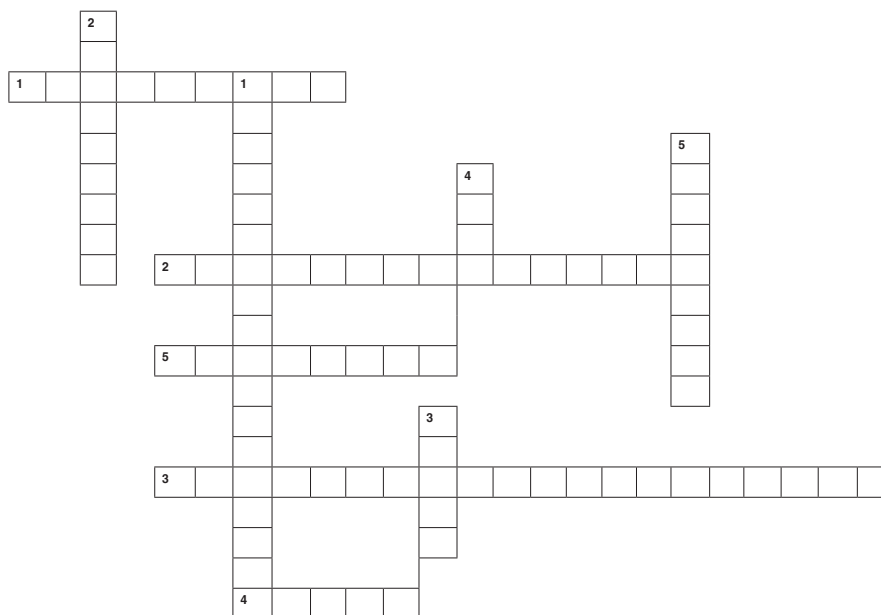
Winners - Crossword October 2023

1st CS Paridhi Garg - ACS-37983

2nd CS Harshad Narsinhbhai Patel - ACS-44439

3rd CS R. Ramnath - ACS-6753

CROSSWORD PUZZLE – COMPANY LAW - NOVEMBER 2023



ACROSS

- Under Companies Act, a company proposing to issue a red herring prospectus shall file it with the Registrar at least _____ prior to the opening of the subscription list and the offer.
- Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, The resolution professional shall prepare a strategy for marketing of the assets of the corporate debtor in consultation with the committee, where the total assets as per the last available financial statements exceed _____ rupees.
- Under IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 The resolution professional shall file the repayment plan, as approved by the creditors, along with the report mentioned in sections 106 or 112, as the case may be, with the Adjudicating Authority on or before completion of _____ days from the resolution process commencement date.
- Under SEBI (Buy-Back of Securities) Regulations, 2018 A copy of the resolution passed at the general meeting under subsection (2) of section 68 of the Companies Act shall be filed with the Board and the stock exchanges where the shares or other specified securities of the company are listed, within _____ working days from the date of passing of the resolution.
- Under Companies Act , 2013 Every company shall file a return in _____ of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details.

DOWNWARDS

- Under Section 33 of Companies Act, 2013, no form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an _____.
- Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 The liquidator shall file the list of stakeholders with the Adjudicating Authority within _____ days from the last date for receipt of the claims.
- Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in _____ of the Schedule I.
- Under SEBI LODR 2015, the listed entity shall give at least _____ days in advance prior intimation to stock exchange about the meeting of the board of directors in which matter related to financial result is to be considered.
- Under Insolvency and Bankruptcy Code, 2016, From the date of appointment of the interim resolution professional, the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand _____.