

FINAL
GROUP-I PAPER-4
CORPORATE AND
ALLIED LAWS

NOV 2017

Roll No.

Total No. of Questions - 7

Total No. of Printed Pages - 11

Time Allowed - 3 Hours

Maximum Marks - 100

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Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate has not opted for Hindi Medium, his/her answers in Hindi will not be valued.

Question No. 1 is compulsory.

Candidates are also required to answer any **five** questions from the remaining **six** questions. In case, any candidate answers extra question(s)/sub-question(s) over and above the required number, then only the requisite number of questions first answered in the answer book shall be valued and subsequent extra questions(s) answered shall be ignored.

Working notes should form part of the respective answers.

Wherever necessary suitable assumptions may be made and disclosed by way of note.

- | | Marks |
|---|--------------|
| 1. (a) Mr. Vikram, a director of M/s Tubelight Limited has made default in filing of annual accounts and annual returns with Registrar of Companies for a continuous period of 3 financial years ending on 31 st March 2016. Examine the validity of the following under the Companies Act, 2013 : | 4 |
| (i) Whether Mr. Vikram can continue to be a director of M/s Tubelight Limited (defaulting company) and also M/s Green Light Limited, where he is also a director ? Also state whether he can be re-appointed as director in these two companies. | |
| (ii) What would your answer be in case Mr. Vikram is a nominee director of a Public Financial Institution ? | |
| (iii) What would be your answer in case the defaulting company (i.e. M/s. Tubelight Limited) is a private limited company ? | |

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- (b) During the financial year 2016-17, Universal Limited declared an interim dividend for the second time. After declaration, the Board of Directors decided to revoke the second interim dividend as its financial position was poor, to accommodate the said interim dividend. 4
- (i) Examine the validity of the Board's decision under the provisions of the Companies Act, 2013.
- (ii) What will be your answer, if the Board proposes to transfer more than 10% of the profits of the company to the reserves for the current year before the declaration of any dividend ?
- (c) Mr. Dheeraj, a Chartered Accountant in practice is liable (indebted) to M/s Voice Data Ltd. (a company engaged in telecommunications) for a sum of ₹ 2,00,000 and a sum of ₹ 3,00,000 to Apollo Hospitals Ltd. for the treatment of his parents. Mrs. Rhea (wife of Mr. Dheeraj) is also liable (indebted) for a sum of ₹ 3,00,000 to M/s Aircel Ltd. (the subsidiary of M/s Voice Data Ltd.). Mr. Dheeraj is proposed to be appointed as the statutory auditor of M/s. Voice Data Ltd, M/s Aircel Ltd. and Apollo Hospitals Ltd. for the current financial year 2017-18. Decide as per the provisions of the Companies Act, 2013, whether the proposed appointments are legally valid. 4
- (d) Mrs. Arshi filed a complaint in the Competition Commission of India against Modern Hospitals, New Delhi for abusing its dominance. She stated in her complaint that she was refused maternity services by the hospital during the 38th week of her pregnancy because she declined to avail the stem cell banking services offered by Celbanks International India, with which the hospital has an exclusive partnership. She contended that the hospital indulged in unfair practices because the arrangement restricts the choice of consumers. Was her petition maintainable under the Competition Act, 2002 ? 4

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- (e) Mr. T. Raghava has secured admission in a reputed and recognized university in Germany, for the study of higher and technical education, outside India. After arrival in Germany, he has gone ill and wants medical treatment facility in a reputed German hospital. He desires to apply to the Government of India for availing the additional remittance beyond the limit approved for foreign currency exchange facility. He has already enjoyed the permitted facility of foreign exchange for studies abroad, for the said financial year. Decide the following as to the facts given in the question as per the provisions of the Foreign Exchange Management Act, 1999 :
- (i) As an individual, to what extent Mr. T. Raghava may avail foreign exchange facilities for higher and technical study in Germany.
- (ii) Can Mr. T. Raghava avail the facility of additional remittance in foreign exchange, beyond the limit, for the medical treatment.

2. (a) (i) Referring to the provisions of the Companies Act, 2013, examine the validity of the following appointment of Directors :
- (A) Brown Limited, having a turnover of ₹ 60 crores in the financial year 2016-17 appoints Ms. Rose as the women director on 1st March 2017. Ms. Rose already holds directorship in twelve companies including ten public companies. She is whole time Cost Accountant in practice.
- (B) Ms. Jasmine holds directorship in eight public companies including managing directorship in two companies and directorship in six companies. In addition, she also holds alternate directorship in three companies and independent directorship in three subsidiary companies of Brown Limited.

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- (ii) M/s Genesis Paper Ltd. has been incurring business losses for past couple of years. The company, therefore, passed a special resolution for voluntary winding up. Meanwhile, complaints were made to the Tribunal and to the Central Government about foul play of the directors of the company, which adversely affected the interests of shareholders of the company as well as the public. In this situation advise whether investigation may be initiated against the company under the provisions of the Companies Act, 2013. **4**
- (b) Mr. Ziyen an Indian citizen holds 25% of the paid up capital of Laurel Steven Limited, a company which was incorporated in Singapore with a paid up capital of 10 million Singapore Dollars. Swaraj Limited a company registered in India holds 30% of the paid up capital of Laurel Steven Limited. Laurel Steven Limited has recently established a share transfer office at New Delhi. The Company seeks your advise as to what formalities it should observe as a foreign company under Companies Act, 2013. **4**
- (c) Mrs. Preeti, a lady aged about 32 years and Managing Director of M/s Growmore plantations Ltd., has been arrested for an offence covered under section 447 of the Companies Act, 2013 on a complaint made by the Director, Serious Fraud Investigation Officer. Mrs. Preeti seeks your legal advise as to the conditions under which she can be released on bail and the role of Special Court in this regard. **4**
3. (a) (i) Agriculture Instruments Limited is a subsidiary of Hindustan Agro Limited a Government company. The Comptroller and Auditor General of India (C & AG) appointed Yes & Co, a firm of Chartered Accountants to conduct a supplementary audit of Agriculture Instruments Limited. Discuss under the provisions of the Companies Act, 2013 whether the C & AG's power to authorize such audit for the said subsidiary company is in order. **3**

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- (ii) In respect of a Government company within the meaning of Sec. 2 (45) of the Companies Act, 2013, state the provisions of the Act in respect of the following :
- (A) The first authority to appoint the first auditor of a Government company and the period within which the appointment should be made ?
- (B) Who is the next authority to appoint the first auditor if there is a failure on the part of the first authority to appoint and within what period ?
- (C) Who is next authority to appoint the first auditor even if there is a failure on the part of the second authority to appoint and within what period ?
- (b) Nature India Limited filed a petition under Insolvency and Bankruptcy Code 2016 with National Company Law Tribunal (NCLT) against Tulip Limited and the petition was admitted. After that, Nature India Limited wanted to withdraw the petition based on a settlement arrived between the parties. Whether it is permissible to withdraw the petition after it has been admitted ? Decide.
Also explain the rules relating to the admission and rejection of application by an adjudicating authority under the Insolvency and Bankruptcy Code 2016.
- (c) "Manav Kalyan", a charitable organization, opened a current account with M/s ABZ Bank on 1st July, 2012. This account was closed on 30th June, 2016. Referring to the obligations of banking companies under the Prevention of Money Laundering Act, 2002, specify the period upto which the said bank has to maintain records relating to the account of "Manav Kalyan".

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4. (a) (i) An allegation was levelled against Drone Limited that the funds of the company are being misused. Mr. Ram, one of the directors of the company wants to inspect the books of accounts of the company in order to ascertain whether the allegation was true. But since Mr. Ram does not have the knowledge of accounting, appoints Mr. Joe his friend and a practicing Chartered Accountant to go through the books of accounts of the company on his behalf and report him the true status. The company has challenged the appointment of Mr. Joe to inspect in books of accounts of the company as invalid. Advise Mr. Ram keeping in view the provisions of the Companies Act, 2013. What would be your answer, if Mr. Ram had been a shareholder holding 76% of shares and not a director in Drone Limited ? 4
- (ii) (A) Mr. Vinay Kumar, applied for the first time for allotment of a Directors Identification Number (DIN) on 1st November, 2016 as he is planning to incorporate a private limited company in Form No. DIN-3 under the Companies Act, 2013. The status of his DIN applications presently is showing as "Put Under Resubmission". He seeks your guidance as to whether his application has been rejected and is he required to obtain a fresh DIN. Advise. 2
- (B) Explain the process and relevance of back office in MCA-21 Program of the Ministry of Corporate Affairs. 2
- (b) Remedial Pharma Limited, over the years, enjoys a high reputation in the market and its general reserves are ten times more than the paid up capital of the company. There is a serious apprehension of cornering the share of the company by a group of unscrupulous persons likely to result in change in the Board of directors which may be prejudicial to the public interest. The company seeks your advice as to how it can block the transfer of shares of the company under the provisions of the Companies Act, 2013. 4

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(c) "Under the Securities and Exchange Board of India (SEBI) Act, 1992 an Asset Management Company, which fails to comply with the regulations, shall be liable to a penalty of one lakh rupees for each day or one crore rupees whichever is less." Whether such Legal provision is directory or mandatory ? Explain briefly the distinction between mandatory and directory provisions in interpreting a statute. 4

5. (a) Venus Limited is a widely held, listed company having two executive directors who are technocrats. The company has suffered losses in the last four years. The company wants to enhance the remuneration of the executive directors to ₹ 6,00,000 per month from existing remuneration of ₹ 4,00,000. The audited balance sheet as on 31st March 2016 reveals that the paid up capital of the company is ₹ 15 crores, accumulated losses ₹ 11 crores and secured long term borrowings ₹ 5 crores. Besides, the company has long term investments of ₹ 11 crores. The company's remuneration committee has recommended the proposal and the company is regular in repayment of its debts. Analyse the proposition with reference to the provisions of the Companies Act, 2013. 6

(b) SR Limited, a listed company wishes to issue equity shares on preferential basis pursuant to a scheme approved under Corporate Debt Restructuring framework specified by Reserve Bank of India to various persons selected by the Board of directors of the company. Following information relevant to the preferential issue is available : 6

(i) Total number of equity shares to be issued : 30 lakhs equity shares of ₹ 10 each out of which 10 lakh equity shares will be allotted on 30th June as fully paid up and balance 20 lakh equity shares shall be allotted on the same date but paid up to ₹ 5 each and balance ₹ 5 shall be called upon at a later date and shall be paid up on 30th November, 2017.

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- (ii) Out of the proposed allottees some persons are holding their shares in physical form and not in dematerialized form and some persons had sold their entire shareholding in January 2017.
- (iii) The meeting of general body of shareholders for approving the preferential issue was held on 15th December 2016.

Based on the above information you are required to answer the following queries with reference to the SEBI (ICDR) Regulations :

- (i) What would be the lock-in period for the shares allotted on preferential basis ?
 - (ii) Who are the persons not entitled for allotment of shares on preferential basis ?
- (c) Mr. Shukla is working as General Manager (Finance and Accounts) in Target Limited. The Board of directors of the said company propose to entrust him with the duty of ensuring compliance with the provisions of the Companies Act, 2013 so that the books of accounts, balance sheet, statement of profit and loss and the cash flow statements can be prepared and maintained in accordance with law. 4
- Draft a Board Resolution for the said purpose. Also point out the consequences in case of default when such a resolution is passed.

6. (a) (i) Pursuant to Section 210 of the Companies Act, 2013 an Inspector was appointed to investigate the affairs of Sterling Trading Limited. Mr. Ahmed the General Manager (Operations) who is aware of certain misdeeds of the management, desires to know whether he is entitled to any protection against dismissal by the company if he discloses the misdeeds during the course of examination by the Inspector. Advise him explaining the relevant provisions of the Companies Act, 2013. 3

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(ii) What do you understand by the terms "Mediation" and "Conciliation" ? Mention the provisions regarding Mediation and Conciliation Panel under the Companies Act, 2013. 3

(b) M/s Jai Industries Limited earned net profit for the last three years as under : 6

Financial Year	Net Profit (₹ in Crores)
2013-14	30
2014-15	40
2015-16	50

During the financial year 2016-17, the Board of Directors of the company contributed to a Charitable Fund ₹ 1.25 crores in July, 2016. Again in January 2017, the Board of Directors passed resolution to contribute to another Charitable Fund ₹ 1.00 crore.

Decide the validity of the decision of the Board of Directors regarding the contribution on both the occasions with reference to the provisions of the Companies Act, 2013.

(c) On completion of 60 years of age as on 31st March 2014, Mr. Iain retired as Professor from a university. From 1st April 2014, he was appointed as Chairman of the Securities and Exchange Board of India for a period of three years. Under the provisions of the Securities and Exchange Board of India Act, 1992, decide whether he can be re-appointed on the same post after expiry of the original tenure ? Also state whether it could be possible for him to relinquish the office before expiry of his tenure ? 4

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7. Answer any **four** of the following :

- (a) Star Limited proposes to acquire 15% equity shares of Gain Investments (P) Limited for 45 lakhs which has a face value of ₹ 35 lakhs. Star Limited has an outstanding loan of ₹ 15 lakhs to a public financial institution and had not defaulted in the repayment of loan instalments stipulated in the loan agreements. Based on the following financial data, advise Star Limited about the legal position regarding the allowability of the proposed investment under the provisions of the Companies Act, 2013.

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(₹ in Crores)

	Star Ltd.	Gain Investments (P) Ltd.
Authorized Capital	1.00	3.00
Paid up Share Capital	0.50	2.00
Free Reserves	0.20	1.50

As on the date of proposition, Star Ltd. does not hold any shares of any company.

- (b) Standard International Ltd. who is a foreign trade creditor having its office in Hong Kong wanted to file a petition under Insolvency and Bankruptcy Code 2016 on default of the debtor in India. It moved a petition u/s 9 of the Code seeking commencement of insolvency process. The foreign company was not having any office or bank account in India. Because of this, it could not submit a "Certificate from a financial institution" as required under the Code. Whether the petition is permissible under the Insolvency and Bankruptcy Code 2016 ? Decide.

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- (c) Examine whether the office of the director of the below mentioned producer company shall fall vacant in the following circumstances under the Companies Act, 1956/2013. 4
- (i) Mr. Right a director of Strawberry Limited a producer company has made a default in payment of loan taken from a company and the default continued for 60 days.
- (ii) Mr. Pure a director of the above company could not call an annual general meeting for the company due to some natural calamity occurred three days before the scheduled date.
- (d) Mr. Joy took a life insurance policy on 1st January 2010 and nominated his close friend as a nominee to whom the money is secured by the policy in the event of his death. Later, before the maturity of the policy, he cancelled the original nomination and made a new nomination in favour of his fifteen year old son. With reference to the provisions of the Insurance Act, 1938, explain the provisions regarding nomination by Life Insurance policyholder. State whether a minor can be nominee in a Life Insurance policy? 4
- (e) Sharp Health Clinic Limited had availed the credit facilities from the United Bank Limited. The company made repayment of loan to some extent but not entirely and accordingly the Bank took recourse under the provisions of Section 13(2) the SARFAESI Act, 2002. Consequently, possession of the mortgaged property was taken up and it was duly advertised. The company also filed an application under Section 17(1) the SARFAESI Act, 2002 before the Debts Recovery Tribunal, which was dismissed by the impugned order. Being aggrieved, the company approached court. Will the company succeed in its petition referring to SARFAESI Act, 2002 ? 4

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