

Roll No. ....

MAY 2018

Total No. of Questions – 7

FINAL  
GROUP-I PAPER-4  
CORPORATE AND  
ALLIED LAWS

Total No. of Printed Pages – 16

Time Allowed – 3 Hours

Maximum Marks – 100

## RGM

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 who 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 question(s) answered shall be ignored.

Working notes should form part of the respective answers.

Wherever necessary, candidates are permitted to make suitable assumptions which should be disclosed by way of note.

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1. (a) M/s Growmore Plantations Limited, a listed company has 4  
unpaid/unclaimed dividend in respect of 150000 Equity Shares for  
the past continuous 7 years. This period of 7 years ended on  
30<sup>th</sup> June, 2017. Mr. Prasad the CFO of the company is of the opinion  
that these 150000 Equity Shares should have been transferred to the

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DEMAT Account of the Investor Education & Protection Fund (IEPF) Authority within 30 days from the end of the 7 years period i.e. by 30<sup>th</sup> July, 2017 respectively. Is the opinion of the CFO correct as per the provisions of the Companies Act, 2013 read with rules framed there under ? What would be your answer had this continuous period of 7 years expired on 30<sup>th</sup> November, 2017. Also state the condition under which these equity shares will not be transferred to the IEPF Authority by the company.

- (b) ABC Limited , an unlisted company having a paid up share capital of Ten crores of Rupees during the preceding financial year has appointed Shri X, a Fellow member of the Institute of Chartered Accountant of India as Chief Financial Officer of the company who is appointed as Key Managerial Personnel under section 203 of the Companies Act, 2013. Shri X is also a Fellow member of the Institute of Company Secretaries of India. The Company Secretary post has become vacant. In order to reduce the administrative expenses, the Company proposes to appoint Shri X as Company Secretary in addition to Chief Financial Officer post. Whether the proposal is legally valid under the provisions of the Companies Act, 2013 ? 4
- (c) M/s Systemtek India Private Limited (Appellant-Corporate Debtor) has challenged the order dated 3<sup>rd</sup> July, 2017 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai, in the National Company Law Appellate Tribunal (NCLAT). 4

NCLT had admitted the application preferred by appellant under Section 10 of the Insolvency and Bankruptcy Code, 2016 and an order of Moratorium was passed and Insolvency Resolution Professional was ordered to be appointed by the Ld. Adjudicating Authority (NCLT).

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The only grievance of the appellant in its challenge is that the movable and immovable property of Guarantor (promoter) has been attached pursuant to a Corporate Insolvency Resolution Process initiated under section 10 against the Appellant by the Ld. Adjudicating Authority (NCLT) which is violative of section 14(1)(c) of the Insolvency and Bankruptcy Code, 2016 though the Code prescribes a Moratorium for certain types of transactions. Decide.

- (d) The promoters of M/s Star Steels Limited, during the month of June, 2017, have raised money from public through issue of prospectus and still have 20% un-utilised amount out the total money so raised. The promoters in control of the company have passed a resolution in the general meeting for effecting change in the objects and/or variations in terms of a contract referred to in the prospectus for utilization of this un-utilised amount in respect of which around 15% of the shareholders have voted against the proposal. The company has decided to give these dissenting shareholders an exit offer as per the Securities Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. The company seeks your advice regarding the conditions and eligibility under these regulations. **4**
- (e) The Board of Directors of M/s XRL Limited, a banking company incorporated in India, for the accounting year ended 31<sup>st</sup> March, 2018, has transferred 10% of its net profit during the year to the Reserve Fund Account. A few shareholders of the company have objected the above act of the Board on the ground that it is violative of the provisions of the Banking Regulation Act, 1949. The Board of Directors of the company in their defense have stated that the company **4**

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has received an order dated 30<sup>th</sup> April, 2018 from the Central Government exempting the company from the provisions of sub section (1) of section 17 of the Act. It is further informed that on the date of the Central Government's order i.e. 30.04.2018 the paid up capital of the company was ₹ 200 Crores and the amount standing in the Reserve Fund Account and Share Premium Account was ₹ 100 Crores and ₹ 75 Crores respectively. Decide whether the order of the Central Government exempting the company is justified as per the provisions of the Banking Regulation Act, 1949.

2. (a) Referring to the provisions of the Competition Act, 2002, answer the following:

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Mr. KUN was initially appointed as the Chairperson of the Competition Commission on 1<sup>st</sup> June, 2015, for a term of three years, when he exactly attained 58 years of age. The Central Government is considering re-appointing him after his term for the maximum period permissible under the provisions of the Act. State the period till which he can be re-appointed as the Chairperson of the Commission.

What will happen to the place of office of the chairperson, in case vacancy arises due to resignation or death of the Chairperson during the tenure of his office ?

What will happen to the place of office of the Chairperson, in case the Chairperson is unable to discharge his functions owing to illness ?

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- (b) The Promoters of M/s Frontline Limited a listed public company propose to have the strength of the Board of Directors as eleven. They also propose to make the Managing Director and whole time directors as directors not liable to retire by rotation. Advise on the following matters as per the provisions of the Companies Act, 2013: **4**
- (i) Maximum number of persons, who can be appointed as directors not liable to retire by rotation.
- (ii) How many of the remaining directors will have to retire by rotation every year at the Annual General Meeting (AGM) ?
- (iii) For the purpose of increasing the strength, certain nominations were received to nominate candidates for contesting elections. One of the nominations was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received.
- (iv) Can the Board of Directors increase the strength of companies' directors to 18 from 11 by appointing additional directors through passing single resolution ?
- (c) M/s Dreamworks Limited (an unlisted company) without any public deposits as per the audited financial statements of the company as at March, 31<sup>st</sup> 2018 gives you the following information: **4**
- |                       |   |
|-----------------------|---|
| Paid up Share Capital | ₹ 20 Crores                                       |
| Gross Turnover        | ₹ 500 Crores                                      |
| Bank Borrowings       | ₹ 40 Crores (from a Nationalized Bank)            |
| Other Borrowings      | ₹ 40 Crores (from a Public Financial Institution) |

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Mr. Gupta, a Chartered Accountant employed in the finance and audit department of the company wants to form a Vigil Mechanism for directors and employees of the company. (1) Advise whether it is mandatory for M/s Dreamworks Limited to formulate a Vigil Mechanism under the provisions of the Companies Act, 2013 and rules framed there under. (2) Are there any penalties that could be imposed on the company for not formulating the Vigil Mechanism ?

- (d) Mr. PRTJ was appointed as a member of the National Company Law Appellate Tribunal. During the month of April, 2018, he was adjudged as an insolvent by a competent authority. The Central Government after consultation with the Chief Justice of India removed Mr. PRTJ from the membership of the National Company Law Appellate Tribunal. Being aggrieved by the decision of the Central Government, Mr. PRTJ approached you to confirm himself whether the decision of the Central Government was appropriate since, he was not given a reasonable opportunity of being heard as a matter of principle of natural justice. Advise him.

**4**

Also state the circumstances in which the Central Government after consultation with the Chief Justice of India can remove any person from the office of President, Chairperson or any Member of the National Company Law Appellate Tribunal.

Your answer should refer to the relevant provisions of the Companies Act, 2013.

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**Marks**

3. (a) Moonlight Limited, held its Board meeting through video conferencing. Due to technical problems, the video Recording which was done, could not be retrieved. The Company seeks your advice for the preparation and recording of the minutes of the Board meeting in the above situation, under the provisions of the Companies Act, 2013 and Rules made thereunder. **4**
- (b) There is a prohibition on importation of "*arms, ammunition or gunpower or any other goods*" under a particular statute. How would you interpret the words "**any other goods**" applying the rules of interpretation of statutes ? Also state when this particular rule will not be applicable citing an example. **4**
- (c) ZYX Producer Company limited has been incorporated recently during the month of April, 2018. The company wants to issue bonus shares immediately due to the fact that the company has earned huge profits during the month of incorporation itself. A Board meeting is proposed to be held to approve this bonus issue. Referring to the provisions of Section 581S of the Companies Act, 1956, advise the Board of Directors of the company. **4**
- (d) M/s EVA Optical Networking India Private Limited having its registered office situated in the city of Gurugram, Haryana State, falling within the jurisdiction of Registrar of Companies, NCT, Delhi & Haryana has filed a petition before the Honorable National Company Law Tribunal, New Delhi Bench (NCLT) under the Companies Act, 2013 seeking an exemption be granted to the petitioner company to change the financial year of the company from 1<sup>st</sup> April to 31<sup>st</sup> March presently adopted by following the financial year in below manner:- **4**
- (i) For the next financial year : - From 1<sup>st</sup> April, 2018 to 31<sup>st</sup> December, 2018 both days inclusive.
- (ii) For the subsequent financial year :- Be changed to a period of one calendar year beginning 1<sup>st</sup> January of one year and concluding on 31<sup>st</sup> December of the same year.

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The Petitioner company in its petition avers that it is a part of EVA Optical Networking Singapore Pvt. Ltd., a company incorporated in Singapore (being the parent company) holding 99% of the Equity Share Capital of the petitioner and the remaining 1 % of the Equity Share Capital is held by EVA Optical Networking SE, a company incorporated in Germany, which is represented to be the ultimate holding company. The parent company as well as the ultimate holding company follows their Financial Year as 1<sup>st</sup> January to 31<sup>st</sup> December of the same year for the purpose of consolidation of accounts and hence in order to streamline the preparation of the consolidated financials of the parent company, the petitioner company is required to align with it. Advise whether the petition will stand before the Honorable NCLT as per the provisions of the Companies Act, 2013. What would be your answer if M/s EVA Optical Networking India Private Limited was registered as a Specified International Financial Services Center (IFSC) private company ?

4. (a) (i) LMN & Company, Chartered Accountants a Limited Liability Partnership firm with CA.L, CA.M and CA.N as partners, is the statutory auditor of a listed company M/s Bright Limited for past 6 years as on 01.04.2014.

**4**

CA.M is also a partner in other Chartered Accountant firm M/s DMC & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013 :

- (1) Upto how many years can LMN & Company continue as statutory auditors of M/s Bright Limited ?
- (2) What shall be the cooling-off period for M/s LMN & Company with respect to M/s Bright Limited ?

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**Marks**

- (3) Can M/s DMC & Company; be appointed as statutory auditors of M/s Bright Limited and it's another listed subsidiary M/s Dark Limited during such cooling-off period ?
- (4) Can M/s LMN & Company be appointed as internal auditors of M/s Bright Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period ?
- (ii) ABC and Company, Chartered Accountants a partnership firm; is the statutory auditor of M/s Wood Work (P) Ltd. since last 6 financial years as on 01.04.2014. The company has a loan outstanding towards Dena Bank Limited for ₹ 25 Crores and the paid-up share capital is ₹ 25 Crores, as per the audited balance sheet for the year ended on 31.03.2014 respectively. Advise the audit firm upto the year upto which they can continue as statutory auditors of M/s Wood Work (P) Limited as per the provisions of the Companies Act, 2013. **2**
- (b) (i) Explain the meaning of the term "Property" under the Prevention of Money Laundering Act, 2002. **6**
- (ii) Mr. Raja was arrested for Counterfeiting Two Thousand Rupees Notes. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.
- (c) Chang Limited, a company incorporated in Singapore proposes to issue prospectus offering its securities in India. The Company has no established place of business in India. **4**

The officer in charge of the issue of the prospectus in India seeks your opinion regarding the provisions relating to registration of the prospectus under the Companies Act, 2013. List out the documents required to be enclosed with the prospectus.

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5. (a) XYZ Limited is a listed company. The Board of Directors of the company at their meeting held on 1<sup>st</sup> November, 2017 approved the proposal to issue bonus shares in the ratio of 1:1. Such bonus issue is authorized by its Articles of Association for issue of bonus shares and capitalization of reserves. The company implemented the bonus issue on 15<sup>th</sup> November, 2017. Whether the company has contravened the provisions of Securities Exchange Board of India (Issue of capital and Disclosure Requirements) Regulation 2009 ?
- What is the time limit in case there is no provisions in the Articles for capitalization of reserve ?
- (b) (i) The e-forms rolled out by the Ministry of Corporate Affairs (MCA) under the provisions of the Companies Act, 2013 and rules framed thereunder are mandatorily numbered alpha-numeric. Explain this concept. What is the chapter wise nomenclature of e-forms provided by MCA in respect of — 1. Acceptance of Deposits by Companies & 2. Management and Administration ?
- (ii) Mrs. Geeta, wife of CA. 'Deepak' the statutory auditor of M/s Avon Builders Limited, acquired shares in the company for a face value of ₹ 75000/- on 15<sup>th</sup> March, 2018. CA. 'Deepak', issued his audit report on 25<sup>th</sup> April, 2018. Examine the validity of this transaction under the Companies Act, 2013. Would your answer be different if face value of the shares have been ₹ 150000/- (market value ₹ 95000/-) ?
- (c) Mr. AMIT is the Managing Director of ANJ Limited, which is a non-government public company. The directors of CHH Limited decided to

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appoint Mr. AMIT as the Managing Director of the company, even though Mr. AMIT decided not to vacate his place of office of Managing Director of ANJ Limited. A notice for a Board meeting specifying a resolution containing the proposal of appointment of Mr. AMIT was served to all the eligible directors of CHH Limited. Out of eight directors of the company, six directors attended the meeting and out of them four directors gave consent to the resolution, one director voted against the said appointment and another director abstained from voting. The Board of Directors seek your opinion whether Mr. AMIT can be appointed as the Managing Director of the company in this situation. Referring to the applicable provisions of the Companies Act, 2013, advise them.

- (d) ASK Housing Finance Company Limited are prepared to give housing loans to the employees of M/s NEWS Pharmacy Limited subject to the condition that the loans are guaranteed by M/s NEWS Pharmacy Limited. M/s NEWS Pharmacy Limited is not a listed company and the company will be exceeding the limits prescribed under the Companies Act, 2013 by providing the guarantees. Advise the company about this legal requirement under the Companies Act, 2013 to give effect to the above proposal. What would be your advice if the company was required to provide security instead of guarantee ?

6. (a) In public interest, HEM Stock Exchange Limited was issued an order by the Stock Exchange Board of India to produce certain information and explanation relating to its operation in writing. The management of the stock exchange were reluctant to part with such information with SEBI and approached you to seek your advice in the following matters :

- (i) Duty of HEM Stock Exchange Limited to furnish periodic returns to SEBI;
- (ii) Power of SEBI to ask for the information asked as stated above, over and above the periodic returns;

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- (iii) Period for which the Stock Exchange is required to maintain the books of accounts which may be inspected by SEBI;
- (iv) Duty of the Stock Exchange and the persons dealing with the stock exchange with regard to the information sought for by SEBI.

Advise them referring to the relevant provisions of the Securities Contracts (Regulation) Act, 1956.

- (b) Some creditors of NTY Limited approached you to guide them to apply to the Tribunal for seeking an order for conducting an investigation into the affairs of the company due to the fact that the business of the company is being conducted with intention to defraud its creditors. Referring to the provisions of the Companies Act, 2013, guide them regarding the circumstances under which and how a person, not being a member of the company can apply to the Tribunal to seek an order for conducting an investigation into the affairs of a company. 4
- (c) BDLK Limited decided to go for voluntary winding up and accordingly the Board of Directors at a meeting of the Board are about to take the necessary steps to initiate the winding up proceedings. The Board of Directors of the company approached you for guidance in this regard. Please list out the steps required under the Insolvency & Bankruptcy Code 2016 before approval of such liquidation proposal with specific reference to meetings and actions of relevant stakeholders. 4
- (d) M/s Sunshine Oils Limited, a listed company as at 31<sup>st</sup> March, 2018 as per the audited financial statements is having 200 depositors with ₹ 50 Crores of deposit in the company. Out of the total 200 depositors 20 depositors of the company have formed a group and have appointed 4

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Mr. Ram (a practicing advocate who is not one of the depositor) as their representative to file an application in the National Company Law Tribunal (NCLT) to bring a Class Action suit against the management of the company as they are of the opinion that the management and conduct of affairs of the company are being conducted in a manner which is prejudicial to the interest of the depositors being oppressive. Will the application of Mr. Ram be admitted by the Honourable Tribunal. Discuss with reference to the provisions of the Companies Act, 2013 ?

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

- (a) M/s Sagar Retail Mega Mart Ltd. applied for winding up on 1<sup>st</sup> April, 2018 before the Honourable Tribunal by passing a special resolution as per the provision of section 271(l)(a) of the Companies Act, 2013 on account of fall in business and continued losses but not due to inability to pay debts. The company was in the business of ordinary retail trade of multiple branded goods. A few shareholders of the company have alleged before the Honourable Tribunal that the company had failed to maintain proper books of accounts for over a period of more than three years immediately prior to the date of winding up application and the sole reason cited by them in support of their allegation is that no proper statements of all goods sold and purchased by the company have been kept as such every officer in default must be punished as per the provisions of the Companies Act, 2013. Mr. Ravi the CFO and officer in default do not refute the allegation of non-maintenance but is of the opinion that this act as per the provision of the Companies Act, 2013 is not punishable. Decide whether the opinion of the CFO is correct. Would your answer be different had the business of the company be wholesale trade instead of ordinary retail trade ?

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- (b) M/s TAS Constructions Private Limited, an operational creditor on 2<sup>nd</sup> April, 2018 being the default date issued a demand notice through speed post to M/s Dheeraj Constructions Private Limited, an unpaid operational/corporate debtor demanding payment of its invoice dated 19<sup>th</sup> March, 2018 for ₹ 5,60,000 (15 days payment terms) towards supply of certain works contract services as per the provisions of section 8(1) of the Insolvency and Bankruptcy Code, 2016 and rules framed there under/s.

**4**

Dheeraj Constructions Private Limited on receipt of the demand notice informed the operational creditor, that vide their e-mail dated 30<sup>th</sup> March, 2018, addressed to the company and all its directors, they have disputed the invoice on the quality of the services rendered and were withholding payment till the dispute is settled but without initiating any legal proceedings under any law for the time being in force. The operational creditor on expiry of the period of 10 days from the date of delivery of the demand notice and non-payment of its dues approached the Adjudicating Authority for the initiation of the corporate insolvency resolution process under section 9(1) of the Insolvency and Bankruptcy Code, 2016. Will the application of the operational creditor filed under section 9 (1) read with section 8(2) (a) of the Insolvency and Bankruptcy Code, 2016 be permitted ?

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**Marks**

- (c) M/s Kashi Mutual Benefits Nidhi Ltd. is incorporated as a Nidhi Company under the Companies Act, 2013. The Board of Directors of the company seeks your advice on the following issues as per the provisions of the Companies Act, 2013 read with rules. Advise. 4
- (i) The Board of Directors is planning to issue preference shares.
- (ii) The Board of Directors have decided to provide Locker Facilities on rent to its members and have estimated that rental income from such letting will be around 30% of the gross income of the company.
- (iii) The Board of Directors of the company is planning to declare dividend for the current year at 45%.
- (iv) The Board of Directors of the company have decided to appoint Mr. Prince (a minor) as a member of the company.
- (d) M/s Star Life Insurance Company Limited issued a life insurance policy in favour of Mr. Raj, which came into force on 1<sup>st</sup> March, 2014. In February 2017 the insurer came to know that there was a mis-statement involving a material fact (without any fraud involved) and repudiated the policy. The insurer till the date of repudiation had collected ₹ 3,00,000/- as premiums under the policy. Mr. Raj did not contest the repudiation but requested the insurer for return of the premiums paid till the date of repudiation to which the insurer refused citing material mis-statement of facts due to which refund cannot be made. Advise Mr. Raj whether the insurer is valid in refusing the refund of the premiums collected as per the provisions of the Insurance Act, 1938. 4

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- (e) In terms of the provisions of the Foreign Exchange Management Act, 1999, Mr. SAM is a person of Indian origin resident outside India. He wants to acquire some immovable properties in India not being agricultural property, plantation or a farm house.

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Referring to the provisions of the Foreign Exchange Management Act, 1999, state the permitted sources, means and restrictions imposed in this regard.

Also state the provisions where the acquisition will be in the form of gift or inheritance by Mr. SAM.

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