

NOV 2018

Roll No.
Total No. of Questions – 7

FINAL
GROUP-I PAPER-4
CORPORATE AND
ALLIED LAWS

Total No. of Printed Pages – 11

Time Allowed – 3 Hours

Maximum Marks – 100

KPS

Answers to questions are to be given only in English except in the case of candidates who have opted in 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.

Working Notes should form part of the respective answers.

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1. (a) GK Associate Public Limited has earned a total profit of ₹ 85 lakhs during the past six years. It has not declared any dividend during these years. Now, the company proposes to appropriate a part of this amount for making payment of dividend for the current year in which it has earned a profit of ₹ 8 lakhs. The Board of Directors proposes a payment of dividend of ₹ 25 lakhs i.e. 25% on paid up capital. Can GK Associate Public Limited declare dividend out of its past accumulated profits and reserves ? Explain the provisions of the Companies Act, 2013, in this regard. **4**

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(b) Mr. X, a Director of Sunrise Limited., was appointed on 1st April, 2014, one of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule V. The company suffered heavy losses during the financial year ended 31st March, 2018. The company was not in a position to pay any remuneration but he was paid ₹ 50 lakhs for the year, as paid to other directors. The effective capital of the company is ₹ 150 crores. Referring to provisions of the Companies Act, 2013, as contained in Schedule V, examine the validity of the above payment of remuneration to Mr. X.

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(c) In relation to filing of financial statements of a company in XBRL mode and by using the XBRL taxonomy, decide whether the following companies are required to file the financial statements in the said mode as per the provisions of Section 137 of the Companies Act, 2013 read with rules framed in this regard :

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- (i) Luckydhan Ltd., a non-banking financial company.
- (ii) M/s Pine Limited which is required to prepare its financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.

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(3)

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- (d) ABC Limited, a listed company, having a paid up equity share capital of ₹ 80 crores and net worth of ₹ 120 crores as on 31st March, 2018 proposes to raise funds to finance its expansion programme by issue of equity shares under the “Qualified Institutions Placement Scheme”.
Answer the following with reference to the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 :
- (i) What are the conditions to be satisfied by the company so that it can make Qualified Institutions Placement ?
- (ii) What is the maximum amount that can be raised by the company under the proposed issue of shares ?
- (e) Referring to the provisions of the Foreign Exchange Management Act, 1999, in respect of a person not being an individual resident in India, state the period within which the individual should sell the realized foreign exchange to an authorized person under clause (a) of sub-section (1) of regulation 4 in respect of remuneration for services rendered in India. Would your answer change, if the realized foreign exchange is in respect of monetary gifts ?
2. (a) The Articles of Association of Amriz Limited provides for a maximum of 15 directors. But the company has only 10 directors and for two of them representing Foreign Collaborators, alternate directors have been appointed. Board meeting held on 1st August, 2018 was attended by four directors including two alternate directors. Examine with reference to the relevant provisions of the Companies Act, 2013 whether quorum was present at the Board Meeting held on 1st August, 2018. Will your answer be different, if the articles provide for a quorum of six directors ?

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(4)

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- (b) M/s DJ Limited, a listed company, as per the audited financial statements as at March 31, 2018 is having issued and paid-up equity share capital comprising of ₹ 10 Lakhs shares of ₹ 10 each and issued and paid-up preference share capital of ₹ 5 Lakhs shares of ₹ 10 each respectively. The members of the company after complying with the provisions of Section 169 of the Companies Act, 2013 removed one Mr. Satish from the directorship of the company on 1st August 2018 before the completion of his term of office. Mr. Satish is also one of the members of the company holding 110000 fully paid-up equity shares. Mr. Satish has alleged oppression on his removal and has moved the jurisdictional Honourable National Company Law Tribunal (NCLT) under Section 241 read with Section 244 of the Companies Act, 2013. The Board of Directors of the company is of the opinion that the application is not maintainable as per the provisions of Section 244 of the Companies Act, 2013. Decide.

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Also, state if any other recourse that is available with Mr. Satish under the provisions of the Companies Act, 2013.

- (c) M/s OBC Limited at its forthcoming Board meeting decided that it will not provide the directors with the facility of participation in the said meeting through electronic mode; can the directors insist on attending the meeting through such mode ? Decide as per the provisions of the Companies Act, 2013. Will your answer differ, if a Director participates in a Board Meeting through electronic mode from his end, even if the company does not provide such facility ?

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- (d) State the Special Provisions related to commodity derivatives inserted in the Finance Act, 2015, with effect from 28.09.2015 in the Securities Contracts (Regulation) Act, 1956

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3. (a) Considering the regulatory provisions of the Companies Act, 2013 and the rules thereof regarding the appointment of independent directors on a company's Board, state whether Z Limited, a listed public company is required to appoint Independent Directors. Also state whether appointment of Independent Director is required in the following cases :
- (i) The public company has a paid up share capital of ₹ 10 crores
 - (ii) What shall be your answer in case the company's paid up share capital is only ₹ 2 crores.
 - (iii) Whether a person who holds the position of a Key Managerial Personnel in the same company can be appointed as an Independent Director ?
 - (iv) In relation to mandatory women directors as required under the Companies Act, 2013 should such directors also be Independent Directors ?

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- (b) Best Bank, a financial creditor sent a demand notice for a claim of ₹ 10.2 crores on XYZ Limited, a corporate debtor on 6th February, 2018. When the petition was filed before NCLT under Insolvency and Bankruptcy Code, 2016, Best Bank claimed that the XYZ Limited has defaulted ₹ 29.8 crores instead of original amount of ₹ 10.2 crores. NCLT appointed an interim insolvency resolution professional. XYZ Limited made an appeal with NCLAT demanding that the Best Bank's claim is not maintainable as there is a difference in the amount mentioned in the demand notice and the application filed under the Code. Decide whether the contention of XYZ Limited is correct. Also, state who can file Corporate Insolvency Resolution process under the Code.

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- (c) Super Track Limited, a manufacturer of footwear entered into an agreement with City Traders, for the sale of its products. The agreement includes, among others, the following clauses. Referring to the provisions of the Competition Act, 2002, examine their validity : 4
- (i) That the City Traders shall not deal with goods, products, articles, whatever name called, manufactured by any person other than Super Track Limited.
 - (ii) That the City Traders shall not sell the goods manufactured by Super Track Limited outside the municipal limits of the city of Madurai.
 - (iii) That the City Traders shall sell the goods manufactured by the Super Track Limited at the price as embossed on the price label of the footwear. However, the City Traders is allowed to sell the footwear at prices lower than those embossed on the price label.
4. (a) The Central Government ordered an investigation under Section 216 of the Companies Act, 2013 against M/s Green Wood Limited for determining the true membership of the company. In connection with this investigation a reference was made to the Tribunal. It appears to the Tribunal that there is a good reason to find out the relevant facts about the equity shares with Differential Voting Rights (DVRs) issued by the company and the Tribunal is of the opinion that unless restrictions are imposed on further issue of such equity shares for two years, the purpose cannot be solved. 4
- Referring to the provisions of the Companies Act, 2013 and Rules framed in this regard, answer :
- (i) Can the Tribunal put such a restriction on further issue of shares ?
 - (ii) Period for which such a restriction can be imposed by the Tribunal ?

(7)

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- (b) State with reference to the provisions of the Companies Act, 2013 whether the following companies can make donations to political parties and if so the conditions to be complied with in this regard. **4**
- (i) ABCD Ltd., a Government company registered in 1991, wants to donate a sum of ₹ 10 lakhs.
- (ii) EFG Ltd., a public company registered in 2013, wishes to contribute a sum of ₹ 5 lakhs.
- (iii) RST Ltd., a company incorporated in the year 2014, decides to contribute a sum of ₹ 3 lakhs.
- (iv) Rama Ltd., wants to make political contribution of ₹ 2,000 in cash.
- (c) In the context of judicial rulings in the matter of merger, answer the following : **4**
- (i) Whether exchange ratio approved by shareholders of merging companies can be questioned by a small group of dissenting shareholders ?
- (ii) Whether Transferor Company is justified in excluding assets held on lease and license arrangement, from those transferred to the transferee company ?
- (d) Rockfort Limited failed to repay the loan borrowed from Nest Bank, which is holding a charge on all the assets of the company. The Bank took over management of the company in accordance with the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The Company is managed by Managing Director Mr. Pawn, who has been now removed. Referring to the provisions of the said Act, examine whether Mr. Pawn is entitled to compensation for loss of office. **4**

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P.T.O.

5. (a) The Central Government wants to appoint Mr. Honest as Company Prosecutor. Can it do so ? Mention the provisions regarding the power of Central Government to appoint Company Prosecutors along with their powers and privileges under the Companies Act, 2013. 4
- (b) The Board of Directors of M/s ABC Motors Ltd. made the following appointments at its meeting held on 1st January, 2018 : 4
- (i) Mr. X, a Director of its subsidiary company, namely, M/s ABC Forgings Ltd., was appointed as Purchase Manager on a consolidated salary of ₹ 1,00,000 per month with effect from 1st January, 2018.
- (ii) Mr. Y was appointed as the Sales Manager on a consolidated salary of ₹ 1,50,000 per month with effect from 1st January, 2018. Answer the following, explaining the relevant provisions of the Companies Act :
- (1) Does the appointment of Mr. X require the approval of the members in a general meeting of the company ?
- (2) Mr. P, a relative of Mr. Y was appointed as a Director of M/s ABC Motors Ltd. on 1st August, 2018. Does it affect the continuation of Mr. Y as the Sales Manager ?
- (c) Kisaan Company Limited, a producer company has been established in Chennai, incorporated on May 1, 2018 with 16 individual members having limited liability by its memorandum. Company called for the first annual general meeting on August 16, 2018 by requiring an immediate notice of 10 days to its members, without any agenda. Later on, meeting was not held due to the quorum which was only 3. Explain the provisions related to calling of 1st AGM and quorum in that meeting. 4

- (d) Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of MR Ltd., a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry. 4
6. (a) The Board of Directors of M/s APCO Limited a listed company, for carrying out the valuation of the immovable properties standing in the name of the company as required under the provisions of the Companies Act, 2013 proposes to appoint Mr. Mehta, an individual as the valuer. Referring to the provisions of the Companies Act, 2013 read with The Companies (Registered Valuers and Valuation) Rules, 2017, the Audit Committee is of the opinion that the Board of Directors does not have the right to appoint the valuer. Decide. 4
- (b) The Central Government has made an application to the Honourable National Company Law Tribunal (NCLT) on 15th April, 2018 in respect of M/s Sweet Dreams Limited, a listed company to reopen its books of account and to recast its financial statements pertaining to the financial year 2006-07 (April - March) to 2009-10. The reopening and the recasting were on account that the earlier financial statements were prepared in a fraudulent manner. The management of the company has objected to this application and prayed to the Honourable NCLT that the financial years in question are beyond 8 years from the application date; hence the said application needs to be rejected. Advise as per the provisions of the Companies Act, 2013, whether the contention of the management is tenable. 4
- State whether your answer will change if the Directors of the company voluntarily file an application to the Honourable NCLT for revision of the financial statements in respect of the above mentioned financial years.

- (c) Trans Asia Limited is registered as a public company u/s 4 (7) of the erstwhile Companies Act, 1956 which is a subsidiary of Galilio Limited, a foreign company. Trans Asia Limited carries on business in India describing itself as a foreign company. Can it do so ? State the actions that can be taken against the company for improper use or description as foreign company under the provisions of the Companies Act, 2013. 4
- (d) Mr. Khan is an insurance agent of Bharat Insurance Limited. He has designed and started selling life insurance through Multilevel marketing scheme. Advise Mr. Khan, considering the provisions of Insurance Laws (Amendment) Act, 2015 regarding the legality of selling insurance through Multilevel marketing scheme. 4
7. Answer any **Four** questions :
- (a) Mr. SP booked office space with Elegant Construction Limited. At the time of booking ₹ 36 lakhs was paid. Remaining amount of ₹ 10 lakhs was paid at the time of taking delivery. He entered into a Memorandum of Understanding (MoU) with the company having various terms and conditions of the sale/allotment. According to the MoU, Elegant Construction Limited was required to build and deliver the possession of the unit within 2 years from the date of execution of the MoU. It also stipulated payment of an assured return of ₹ 82,000 per month (subject to TDS u/s 194A of IT Act, 1961) till possession of the unit was delivered to Mr. SP. Elegant Construction Limited failed to pay the assured return. Thereafter, Mr. SP filed an application for initiating insolvency resolution process. Decide about the validity of the said application in view of the provisions of Insolvency and Bankruptcy Code, 2016 as regards the definition of a "Financial Creditor" under Section 5 (7) read with Section 5 (8) of the Code. 4

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- (b) Mr. RG is a practicing Chartered Accountant and having 15 years of professional experience. Can he be appointed as Technical Member of National Company Law Appellate Tribunal as per Section 411 of the Companies Act, 2013 ? Will your answer be different, if he is appointed as Technical Member of National Company Law Tribunal ? **4**
- (c) M/s, IJK Limited was wound up with effect from 15th March 2018 by an order of the Court. Mr. A, who ceased to be a member of the company from 1st June 2017, has received a notice from the liquidator that he should deposit a sum of ₹ 5,000 as his contribution towards the liability on the shares previously held by him. In this context explain whether Mr. A can be called as a contributory, whether he can be made liable and whether there is any limitation on his liability. **4**
- (d) Mr. JJ was found guilty by the authorities under Section 13 of the Prevention of Money Laundering Act, 2002 and monetary penalty was levied on Mr. JJ. But Mr. JJ could not pay the penalty amount. What is the mechanism to recover the fine or monetary penalty imposed on any person by the authorities under Section 13 or Section 63 of the Prevention of Money Laundering Act, 2002 ? **4**
- (e) Explain the rule of "Literal Construction" with an example. **4**
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