

Roll No.

FINAL
GROUP-I PAPER-4
CORPORATE AND
ALLIED LAWS

MAY 2016

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 who has not opted for Hindi Medium, his/her answers in Hindi will not be valued.

Question No. 1 is compulsory.

Candidates are 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 answered shall be ignored.

Marks

1. (a) Explain the law laid down under the Companies Act, 2013 in respect of filing of annual financial statements with Registrar of companies in the following two situations who is liable for the default. 4
- (i) Where financial statements of the company are filed with the ROC after 10 months from its due date;
- (ii) Where financial statements are not at all filed by the company with the ROC ?

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- (b) A group of creditors of Mac Trading Limited makes a complaint to the Registrar of Companies, Hyderabad alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 10 A.M. on 1st July 2015 and the ROC entered the premises at 10.30 A.M. for the search. Examine the powers of the Registrar to seize the books of the company. 4
- (c) Indian Software Ltd. seeks to export software to its client in Indonesia. In this regard-
- (i) explain the procedure to be adopted for export of software under the Foreign Exchange Management Act, 1999 and also state the period within which export value is to be realised.
- (ii) explain the position in case of delay in receipt of payment from its client.
- (d) Explain the functioning of the 2 types of Front Office (FO) in accessing MCA 21 portal of the Ministry of Corporate Affairs. 4
- Also state the nature of services which can be availed of by its user on the MCA 21 portal.
- (e) XYZ, a recognized stock exchange fails to comply with certain directions issued by the Securities and Exchange Board of India and the adjudicating officer initiated proceedings for the purpose of imposing penalty. The stock exchange seeks your advice whether it is possible to go for settlement of the proceedings. Advise explaining the relevant provisions of the Securities Contracts (Regulation) Act, 1956 ? 4

2. (a) (i) XYZ Ltd. wants to make an initial offer of its securities. Advise the company on the following issues under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 :- 4
- (1) Extent of promoters contribution;
 - (2) Lock in period of securities held by promoters;
 - (3) Lock in period of securities held by persons other than promoters;
 - (4) Lock in period of securities allotted to employees of the company under Employee stock option.
- (ii) Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of LR 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
- (b) On a reference made by the Central Government, the Company Law Board passed an order authorizing the Central Government to appoint its nominees as directors of Bangalore Computers Ltd., to safeguard the interest of shareholders and public interest. Referring to the provisions of the Companies Act, 2013 state the restrictions, if any, on the number of directors and the period for which such appointment may be made. State also the action that may be taken by the Central Government with regard to the affairs of the company when such appointment of directors is made by the Central Government. 4
- (c) What are the conditions to be fulfilled for calling meetings at shorter notice than as prescribed by Companies Act, 2013. 4
- One of the directors, a senior professional, objected to receiving the notice by e-mail. Advise him.

3. (a) (i) A scheme of amalgamation was approved by overwhelming majority of members of both the merging companies at meetings called as per directions of the Court. When the scheme of amalgamation was awaiting sanction of the Court, the exchange ratio was questioned by a small group of members of one of the merging companies. The exchange ratio was fixed by a reputed firm of Chartered Accountants. 4
- Examine with reference to the decided case law under the Companies Act, 1956 whether the dissenting shareholders will succeed. Would your answer be different if the exchange ratio was objected to by the Central Government ?
- (ii) State the circumstances in which a director of a company is required under the Companies Act, 2013 to disclose his interest in a contract or arrangement to be entered into by the company. Examine whether the validity of the contract is affected by non-disclosure of interest by the director. 4
- (b) The Articles of Association of Coimbatore Milk Producers Limited restricts the membership to producers. You are required to answer the following questions explaining the relevant provisions of the Companies Act, 1956. 4
- (i) Mr. Gopal, one of the members proposes to transfer part of his shares. State the steps to be taken by Mr. Gopal to give effect to the proposed transfer.

- (ii) Mr. Ramu, one of the members, nominated his son, Mr. Krishnan to be entitled to his shares in the event of his death. Mr. Ramu died. State the action that can be taken by the producer company in case Mr. Krishnan is not a producer.
- (c) (i) Shyam & Co. is engaged in the manufacture of cement. It sold the goods initially below the cost price for a year and slowly, its other competitors went out of the market. Thereafter, the enterprise changed its strategy and sold the goods above its cost price and made substantial profits. Examine the action, if any, which may lie against this enterprise under the Competition Act, 2002. 4
- (ii) What do you mean by anti-competitive agreements, viz, tie-in arrangement and resale price maintainance ?
4. (a) (i) R Ltd. wants to constitute an Audit Committee. Draft a board resolution covering the following matters [compliance with Companies Act, 2013 to be ensured]. 8
- (1) Member of the Audit Committee
- (2) Chairman of the Audit Committee
- (3) Any 2 functions of the said Committee
- (ii) What would be the minimum likely turnover or capital of this company ?
- (iii) What is the role of the Audit Committee vis a vis the statutory auditor when the company wishes to engage them to perform certain engagements not restricted under Sec. 144 ?

- (b) XYZ Limited is an unlisted public company having a paid-up capital of twenty crore rupees as on 31st March, 2015 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2015. The total number of directors is thirteen. 4

Referring to the provisions of the Companies Act, 2013 answer the following :

- (i) State the minimum number of independent directors that the company should appoint.
- (ii) How many independent directors are to be appointed in case XYZ Limited is a listed company ?
- (c) The Insurance Act, 1938 requires to establish Tariff Advisory Committee (TAC). In this regard, specify – 4
- (i) Object and purpose of TAC;
- (ii) Constitution of its members and Chairperson.

5. (a) International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration : 8
- (i) Commission at the rate of five percent of the net profits to its Managing Director, Mr. Kamal.
- (ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of ₹ 50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.

(iii) The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for professional services rendered as software engineer, whenever such services are utilized.

You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals.

- (b) (i) Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited. 4
- (ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company.

Examine with reference to the provisions of the Companies Act, 2013 whether MN Limited and PQ Limited can be considered as Government Company.

- (c) Apex Limited failed to repay the amount borrowed from the bankers, ACE Bank Limited, 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 a Managing Director, Mr. X. Referring to the provisions of the said Act, examine whether Mr. X is entitled to compensation for loss of office and also explain the effect of such takeover on certain rights of the shareholders of the company. 4

6. (a) AVM Producer Company Ltd. seeks your advise on the following 8
aspects of the working of a Producer company under the Companies
Act, 1956 :-
- (i) Criteria for appointment of Secretary as also the legal position, if
its financial position is unsatisfactory.
 - (ii) Can the Board of Directors of the company direct its member to
surrender his shares to the company, if so, under what
circumstances ?
 - (iii) Provisions relating to donation to any institution, as also to a
political party.
 - (iv) Provisions relating to investment of general reserves, as also
investment in the shares of a company, other than a Producer
company.
- (b) A company was in financial distress. They pledged certain immovable 4
properties with a nationalised bank in the belief that their loan limits
would be increased. However within 3 months, some creditors filed a
petition for winding up. The management was accused of fraudulent
preference.
- (i) In the above context discuss fraudulent preference.
 - (ii) Would your answer be different if the charge was created in
favour of an NBFC ?

- (c) The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Advise explaining the relevant provisions of the Prevention of Money Laundering Act, 2002. 4

7. Answer any four of the following :

- (a) DD Ltd. is a listed company and it has been served with notice for appointment of small shareholders' director. Referring to the provisions of the Companies Act, 2013, advise on the following : 4
- (i) Define the expression 'small shareholder' and specify the number of small shareholders who may serve notice on the company for a director representing them.
- (ii) Is it possible to appoint a person, who does not hold any share in the company, as small shareholders' director ?
- (iii) What is the tenure of small shareholders' director and whether he can be re-appointed as such, after expiry of his tenure ? Also state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholders' director.

- (b) Mr. Joseph, a member of Armaments Ltd., is aggrieved due to failure of the company to make payment of dividend declared in the AGM held in August, 2015. He makes a complaint, in writing, before the court of competent jurisdiction within the prescribed period of limitation, but the court refused to take cognizance of the alleged offence. Explain the legal position in this regard under the Companies Act, 2013. 4

Also state the offences under the Companies Act, 2013 which are cognizable and which are non-cognizable.

- (c) Explain the provisions of the Companies Act, 1956 relating to preparation and filing of Statement of Affairs (SA) in case of winding of a company by the Court, with regard to the following aspects : 4

- (i) Who is required to prepare and file SA and whether cost and expenses incurred in preparing SA are recoverable ?
- (ii) Contents of SA and the period within which the same is required to be submitted and to whom ? Also state about delay in filing SA and upto what period the same is allowed.

- (d) How will you interpret the definitions in a statute, if the following words are used in a statute ? 4

- (i) Means, (ii) Includes

Give one illustration for each of the above from statutes you are familiar with.

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- (e) Galilio Ltd. is a foreign company in Germany and it established a place of business in Mumbai. Explain the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements, as also the documents to be attached alongwith the financial statements by the foreign company. **4**
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