

NEW SCHEME

FINAL COURSE – GROUP I PAPER 4: CORPORATE AND ECONOMIC LAWS

Syllabus 100%

Question 1 is compulsory.

The students may attempt any five of the remaining six questions.

Maximum Time : 3 hours

Maximum Marks : 100

TYPE - 100 A

1. a) Clinton who is registered as an Intermediary fails to enter into an agreement with his client and hence penalised by SEBI under section 15B of the SEBI Act. Advise Mr. Clinton as to what remedies are available to him against the order of SEBI.

(8 marks)

b) The issued and paid up capital of Crown Jewels Limited is ` 5 crores consisting of 5,00,000 equity shares of ` 100 each. The said company has 500 members. A petition was submitted before the Tribunal signed by 80 members holding 10,000 equity shares of the company for the purpose of relief against oppression and mismanagement by the majority shareholders. Examining the provisions of the Companies Act, 2013, decide whether the said petition is maintainable. Also explain the impact on the maintainability of the above petition, if subsequently 40 members, who had signed the petition, withdrew their consent.

(6 marks)

c) (i) Discuss the legal position in the given situation with reference to the provisions of the Companies Act, 2013:

Mr. Arthav, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar of Companies (RoC) within the prescribed time. Besides, the company fails to intimate about the resignation of Mr. Arthav to RoC.

(4 marks)

c) (ii) DDF Ltd. was ordered to be wound up compulsory by an order dated 10th March, 2017 by the Tribunal. The official liquidator who has taken control for the assets and other records of the company has noticed the following:

The Managing Director of the company has sold certain properties belonging to the company to a private company in which his son was interested causing loss to the company to the extent of INR 50 lakhs. The sale took place on 15th October, 2016.

Examine what action the official liquidator can take in this matter. Having regard to the provisions of the Companies Act, 2013.

(2 marks)

2. a) 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 under section 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 couldn't submit a "certificate from financial institution" as required under the code. Examine whether the petition is permissible under the Insolvency & Bankruptcy Code, 2016?

(7 marks)

b) Mr. Joey, a member of Hardcastle 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.

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

(5 marks)

c) Mr. Arvind, a director of Northway highway Tolls Private Limited, authorised by board of directors to prepare and file return, report or other documents to registrar on behalf of the company. He timely filed all the required documents to Registrar; however, subsequently it is

found that the filed documents are false in respect to material particulars (knowing it to be false) submitted to registrar. Explain the penal provision under the Companies Act, 2013.

(2 marks)

d) A meeting of members of Evergreen Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 300 members holding 9,00,000 shares. 120 members holding 7,00,000 shares in the aggregate voted for the scheme. 140 members holding 2,00,000 shares in aggregate voted against the scheme. 40 members holding 1,00,000 shares abstained from voting. Determine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority?

(6 marks)

3. a) Mr. Rohit was appointed as the member of the National Company Law Tribunal. He (at the age of 63 years) has now resigned from his office by giving a notice to the Central Government, by stating that he will stop acting as a member to NCLT with immediate effect.

The Central Government tells him that you have to continue in office for 3 more months. Is the contention of Central Government correct?

(3 marks)

b) Popular Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The bank issued notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified.

Identify and explain the measures to be taken by the Bank to enforce its security interest under the said Act.

(8 marks)

c) In 2016, Company Arun, food processor manufacturing unit entered into a joint venture agreement with Company PAC, the largest manufacturer of Food processors for supply of parts of mixer & grinder for manufacturing its latest model. Both the companies are registered under the Companies Act 2013. Agreement carries the term that all disputes shall be arbitrated in Mumbai. State the type of arbitration agreement made between them.

What will happen if the agreement does not have any clause relating to arbitration? Disputes arose between them concerning quality of material supplied in 2017.

(3 marks)

d) The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of VFX 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.

(6 marks)

4. a) The last three years' Balance Sheet of DELL Ltd., contains the following information and figures:

	As at 31.03.2015	As at 31.03.2016	As at 31.03.2017
Paid up capital	50,00,000	50,00,000	75,00,000
General Reserve	40,00,000	42,50,000	50,00,000
Credit Balance in Profit & Loss Account	5,00,000	7,50,000	10,00,000
Debenture Redemption Reserve	15,00,000	20,00,000	25,00,000
Secured Loans	10,00,000	15,00,000	30,00,000

On going through other records of the Company, the following is also determined:

Net Profit for the year (as calculated in accordance with the provisions of the Companies Act, 2013)	12,50,000	19,00,000	34,50,000
--	-----------	-----------	-----------

In the ensuing Board Meeting scheduled to be held on 5th November, 2017, among other items of agenda, following items are also appearing:

- (i) To decide about borrowing from Financial institutions on long-term basis.
- (ii) To decide about contributions to be made to Charitable funds.

Based on above information, you are required to find out as per the provisions of the Companies Act, 2013, the amount up to which the Board can borrow from Financial institution and the amount up to which the Board of Directors can contribute to Charitable funds during the financial year 2017-18 without seeking the approval in general meeting.

(8 marks)

b) Discuss the following aspects of the working of a PQR Producer Company Ltd. 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.

(6 marks)

c) Can foreign contribution be received in and utilised from multiple Bank Accounts?

(3 marks)

d) What is the right of any person to receive the income from collective investment scheme?

(3 marks)

5. a) Excel limited is a listed company with a turnover of ` 60 crores in the FY 2016-2017. The company appoints Ms. R as the women director on 1st March 2017. Ms. R is already a director in twelve companies including ten public companies. Also, Ms. R is chartered accountant in practice.

Further, also, Ms. R, is a director in Supreme Ltd. where he is acting in a professional capacity. Since lots of proposal for the holding of directorship in various companies are lined up before the Ms. R, so in order to retain him, Remuneration and nomination committee proposed to enhance the remuneration of Ms. R from 4 Lac per month to 6 Lac per month. However, Supreme Limited was running in losses for last 2 years.

Evaluate in the light of the given facts, the following situations with reference to the provisions of the Companies Act, 2013-

- (i) The validity of an appointment of Ms. R in Excel Limited.
- (ii) Analysis the proposition of enhancement of the remuneration of Ms. R in Supreme Ltd.

(8 marks)

b)

- (i) As per provisions of the Companies Act, 2013, what is the status of NESTLE Ltd., a Company incorporated in London, U.K., which has a share transfer office at Mumbai?
- (ii) CDS Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 2013. You are required to state, where the said company should deliver such documents.
- (iii) In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalty prescribed under the said Act, which can be levied.

(6 marks)

c)

- (i) Mr. Prashant has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.
- (ii) Mr. Sameer is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

(6 marks)

6. a) Wisdom Ltd. commits a default against the debts taken from the financial creditors. Mr. F, a financial creditor initiated the corporate insolvency resolution process against the Wisdom Ltd. Mr. X, another financial creditor, thereof files an application for initiating corporate insolvency resolution process with the Adjudicating Authority. Examine with reference to the validity as to the filing of an application by Mr. X for initiation of corporate insolvency resolution process?

(4 marks)

- b) SEBI has asked Jaipur Stock Exchange to furnish their books of accounts and audited financial statements for the period 1st April 2015 to 31st March 2017 within 30 days of the receipt of the communication by the stock exchange. The communication was received by the company on 30th April 2017 and no documents were furnished to SEBI in reply to the notice till 15th May 2017. Can the stock exchange be penalised for this inaction?

(2 marks)

- c) Origin paper Ltd. has been incurring business losses for past couple of years. The company therefore, passes 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 public. In this situation advise whether investigation may be initiated against the company under the provision of the Companies Act, 2013. Further decide whether application can be made to Tribunal for Relief in the above affairs of the company once the investigation is initiated against the company.

(8 marks)

d) Upon complaints been received by SEBI, regarding the listed securities of Midtown Limited at the Guwahati Stock Exchange, Guwahati Stock Exchange has passed an order to delist the securities of the company from the said stock exchange. Midtown Limited is aggrieved by the order of the Guwahati Stock Exchange. Advise the company on the further step that the company can take against the order of Guwahati Stock Exchange to delist the securities.

(3 marks)

e) What is the procedure of Insolvency Resolution Process for a Corporate Applicant?

(3 marks)