Intermediate Course: Group – I **(Mock Test Series : 1)**
DATE: 22.07.2024 **MAXIMUM MARKS: 100** **TIMING: 3¼ Hours**

PAPER 2 : CORPORATE AND OTHER LAW

1. **The question paper comprises two parts, Part I and Part II.**
2. **Part I comprises Case Scenario based Multiple Choice Questions (MCQs).**
3. **Part II comprises questions which require descriptive type answers.**

PART I – CASE SCENARIO BASED MCQs (30 MARKS)

PART - I IS COMPULSORY

Ans. 1 to Ans. 4
CASE SCENARIO

1. Ans. c
2. Ans. a
3. Ans. d
4. Ans. b

MCQ [4 MCQ of 2 Marks Each : Total 8 Marks]

Ans. 5 to Ans. 7
CASE SCENARIO

7. Ans. c
8. Ans. a
9. Ans. d

MCQ [3 MCQ of 2 Marks Each : Total 6 Marks]

Ans. 8 to Ans. 10
CASE SCENARIO

8. Ans. a
9. Ans. b
10. Ans. b

MCQ [3 MCQ of 2 Marks Each : Total 6 Marks]

Ans. 11 to Ans. 13
CASE SCENARIO

11. Ans. c
12. Ans. b
13. Ans. c

MCQ [3 MCQ of 2 Marks Each : Total 6 Marks]

14. Ans. b
15. Ans. a

MCQ [2 MCQ of 2 Marks Each : Total 4 Marks]

PART II - DESCRIPTIVE QUESTIONS (70 MARKS)

QUESTIONS NO. 1 IS COMPULSORY. CANDIDATES ARE REQUIRED TO ANSWER ANY FOUR QUESTIONS FROM THE REMAINING FIVE QUESTIONS
Wherever necessary, suitable assumptions may be made and disclosed by way of a note. Working Notes should form part of the answer.

Answer 1:

(a) The paid up share capital of Sanjay Ltd. is Rs. 1,00,00,000 divided into 10,00,000 equity shares of Rs. 10 each. Of this, Harsh Ltd. is holding 6,00,000 equity shares. Hence, Harsh Ltd. is the holding company of Sanjay Ltd. and Sanjay Ltd. is the subsidiary company of Harsh Ltd. by virtue of section 2(87) of the Companies Act, 2013. **{1 M}**

In the instant case,

(i) As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, Sanjay Ltd. cannot make further investment in equity shares of Harsh Ltd. during 2023-24.

(ii) As per second proviso to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee. Therefore, Sanjay Ltd. can exercise voting rights at the Annual General Meeting of Harsh Ltd. only in respect of 1% shares held as a legal representative of a deceased member of Harsh Ltd.

(iii) Section 19 also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, Harsh Ltd. cannot allot or transfer some of its shares to Sanjay Ltd.

{1 M Each}

Answer:

(b) According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. **{2 M}**

In the given question, the company does not fulfill any of the given criteria (net worth/ turnover/ net profit) for the immediately preceding financial year (i.e., 1.4.2019 to 31.3.2020). Hence, ABC Limited is not required to constitute Corporate Social Responsibility Committee for the financial year 2020-21. **{1 M}**

Answer:

(c) **Appointment of Debenture Trustee:** Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed. **{1/2 M}**

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures. **{1/2 M}**

Further according to the provided rules inter-alia, no person shall be appointed as a debenture trustee, if he-

(1) beneficially holds shares in the company;

(2) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(3) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

{1/2 M Each}

Thus, based on the above provisions answers to the given questions are as follows:

(i) A shareholder who has holds shares of Rs. 10,000, cannot be appointed as a debenture trustee.

(ii) A creditor whom company owes Rs. 999 cannot be appointed as a debenture trustee. The amount owed is immaterial.

{1/2 M Each}

(iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

Answer:

(d) Approval to the following transactions under FEMA, 1999:

(i) Foreign Exchange drawals for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the said Ministry of the Government of India. **{$1^{1/2}$ M}**

(ii) Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses requires an approval from RBI. However in connection with medical treatment abroad, no approval of the Reserve Bank of India is required. Therefore, R can draw foreign exchange up to amount estimated by a medical institute offering treatment. **{$1^{1/2}$ M}**

Answer 2:

(a) Shelf prospectus – As per the Explanation given in Section 31 of the Companies Act, 2013, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. **{1/2 M}**

Provisions relating to issue of Shelf-prospectus:

(1) **Filing of shelf prospectus with the registrar:** According to section 31, any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage- **{$1^{1/2}$ M}**

(i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and

(ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) **Filing of information memorandum with the shelf prospectus:** A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus: **{$1^{1/2}$ M}**

(3) **Intimation of changes:** Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof. **{$1^{1/2}$ M}**

Memorandum together with the shelf prospectus shall be deemed to be a prospectus: Where an information memorandum is filed, every time an offer of

securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Answer:

(b) According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner. **{1/2 M Each}**

According to the Companies (Registration of Foreign Companies) Rules, 2014, **"electronic mode"** means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

(a) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(c) financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management; **{1/2 M Each}**

(d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(e) all related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

(i) In the given situation, Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013. **{0.75 M}**

(ii) In the given situation, Xen Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xen Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, Xen Limited Liability Company is a foreign company as per the Companies Act, 2013. **{0.75 M}**

Answer:

(c) As per Section 3(22) of the General Clauses Act, 1897, the term "good faith" means a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not; **{1 M}**

The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. **{1 M}**

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not malafide is presumed to have been done in good faith. **{1 M}**

In the given problem in the question, Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Such a purchase made could not be said to be made in good faith as it was done without due care and attention as is expected with a man of **{1 M}**

ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

Answer 3:

(a) (i) In terms of Rule 2 (1)(c)(xvii) of the Companies (Acceptance of Deposits) Rules, 2014, if a start-up company receives rupees twenty-five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

In the given case, Moon Technology Private Limited, a start-up company, received Rs. 20.00 lacs from Praveen in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. The amount received is below threshold limit of Rs. 25.00 lacs. Hence, the amount of Rs. 20.00 lacs shall be considered as deposit and the provisions for acceptance of deposit will apply accordingly. **{1 M Each}**

(ii) According to Rule 3 (1) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

(1) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

(2) such deposits are repayable only on or after three months from the date of such deposits or renewal.

In the given case of Shyam Readymade Garments Limited, it wants to accept deposits of Rs. 50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits. **{1 M Each}**

(iii) As per Rule 2 (1) (e) of the Companies (Acceptance of Deposits) Rules, 2014, the term "eligible company" means a public company as referred to in section 76 (1), having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits: **{1 M}**

However, an eligible company, which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution.

Thus, a public company can accept deposit from public if it is an eligible company. In the given question, Y Ltd. has a turnover of Rs. 400 crore and net worth of Rs. 50 crore. Hence, it cannot be termed as an eligible company and thus can not accept deposits from the public. **{1 M}**

Answer:

(b) According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under

section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. {2 M}

Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. A, therefore, ought to have been careful while purchasing property and should have verified beforehand that Kesha Limited had already created a charge on the property. {2 M}

In view of above, the contention of Kesha Limited is correct.

Answer:

(c) **(A)** **Remittance of Foreign Exchange for studies abroad:** Foreign exchange may be released for studies abroad up to a limit of US $ 250,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad. In this case since US $ 120,000 is the drawal of foreign exchange, so permission of the RBI is not required. {2 M}

(B) **Gift remittance exceeding US $ 10,000:** Under the provisions of Section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US $ 250,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, there is no need for any permission from the RBI. {2 M}

Answer 4:

(a) According to proviso to section 68(2) of the Companies Act, 2013, no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any. {1 M}

Section 68 (8) casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under section 62 (1) (a) or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares. {2 M}

Keeping in view of the above provisions, the statement "the offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions" is not valid. {2 M}

Answer:

(b) According to section 123 of the Companies Act, 2013, a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company. {2 M}

As per the given facts, G Medical Instruments Limited has earned a profit of Rs. 910 crores for the financial year 2021-2022. It has proposed a dividend @ 10%.

However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.
As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if G Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so. **{2 M}**

Answer:

(c) **"Effect of Repeal":** According to section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

{1 M Each}

Answer 5:

(a) As per section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.
Whereas Section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM. **{1 M}**
As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.
As per the given provisions following are the answers:

(i) Appointment of Mr. Tel by the Board of Directors is valid as per the provisions of section 139(6).

(ii) Appointment of Mr. Tel at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Tel is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

(iii) As per law, auditor appointed shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM i.e., for 5 years. Accordingly, here appointment of Mr. Bell, which is for 4 years, is not in compliance with the said legal provision, so his appointment is not valid.

{1 M Each}

Answer:

(b) According to section 7 of the Limited Liability Partnership Act, 2008, every Limited

Liability Partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. {$2^{1/2}$ M}

In the given case, Rohan John LLP intends to appoint Mr. John and Ms. Kate (both are non resident Indians) as the only designated partners. This is not in consonance with provisions of the Limited Liability Partnership Act, 2008, as at least one of the designated partners should be a resident in India. {$2^{1/2}$ M}

Answer:

(c) The rule of Ejusdem Generis applies when:

1. The statute contains an enumeration of specific words
2. The subject of enumeration constitutes a class or category
3. That class or category is not exhausted by the enumeration
4. General terms follow the enumeration; and
5. There is no indication of a different legislative intent.

{1 M Each}

Answer 6:

(a) (i) According to section 96 of the Companies Act, 2013, first annual general meeting of the company should be held within 9 months from the closing of the fir st financial year.
Hence, the statement that the first AGM of a company shall be held within a period of six months from the date of closing of the first financial year is **incorrect**.

(ii) According to proviso to section 96(1), the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.
Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is **incorrect.**

(iii) According to section 96, subsequent AGM (i.e. second AGM onwards) of the company should be held within 6 months from the closing of the financial year.
Hence, the given statement is **correct.**

(iv) According to section 96, the gap between two annual general meetings should not exceed 15 months.
Hence, the given statement is **correct**, that there shall be a maximum interval of 15 months between two AGMs.

{1 M Each}

Answer:

(b) Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall, be liable to pay compensation to the person who has sustained such loss or damage. {1/2 M}

In the present case, Mr. Andhrey purchased the shares of Shreen Ltd. on the basis of the expert report published in the prospectus. Mr. Andhrey can claim compensation for any loss or damage that he might have sustained from the purchase of shares. However, he did not suffer any loss due to purchase of such shares.
Hence, Mr. Andhrey will have no remedy against the company. {1/2 M}

Circumstances when an expert is not liable: An expert will not be liable for any mis- statements in the prospectus under the following situations:

(i) Under section 26 (5), that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for filing, or

(ii) Under section 35 (2), that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;

(iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;

(iv) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder. **{1 M Each}**

Answer:

(c) According to section 20(2) of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. **{1 M}**

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected. **{1 M}**

Accordingly, the questions as asked may be answered as under:

(i) The contention of Ajay shall be tenable, for the reason that the notice was not properly served.

(ii) In the given circumstances, the company is bound to serve a valid notice to Ajay by registered post at his residential address at Kanpur and not outside India. **{1 M}**

Answer:

(d) (i) **Insurance Policies covering immovable property have been held to be immovable property:** This statement is not valid. Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property. **{1 M}**

(ii) **The word 'bullocks' could be interpreted to include 'cows':** This statement is not valid. Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'. **{1 M}**

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