

NOV 2018

Roll No.

Final New Syllabus

Total No. of Questions – 6

Paper - 4

Total No. of Printed Pages – 11

Corporate and Economic Laws

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 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 **four** questions from the remaining **five** questions.

Working notes should form part of the respective answers.

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1. (a) The Board of Directors of M/s. Diya Steels and Aluminium Limited, a listed Company having a paid up equity share capital of ₹ 15 crores and preference share capital of ₹ 1 crore and 1100 small shareholders holding equity shares, seeks your advice on the following : **8**
- (i) Is it mandatory for the Company to appoint a Director to represent Small Shareholders ?
- (ii) If the Company decides to appoint such a Director, the procedure to be followed by the Company for such appointment and the tenure for which such appointment can be made.
- (iii) Whether such a Director be considered as an Independent Director ?
- (iv) When does a person appointed as a small shareholders Director vacate his office ?

Advise suitably in the light of the provisions of the Companies Act, 2013 and the rules framed thereunder.

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(b) Primex Securities (P) Ltd. is a Company involved in stock broking and is registered with SEBI. The said broking Company failed to :

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- Redress the grievances of the investors within the stipulated time.
- Segregate securities or money of clients and used the same for self use or for any other clients.

The Securities and Exchange Board of India issued an Order against the said Company for committing the above offences. The Managing Director of the Company seeks your advice on the following under the provisions of the Securities Contract (Regulation) Act, 1956.

- (i) What is the penalty for the above offences ?
- (ii) Whether the offence committed by the stock broking company is compoundable ? If so, by whom ?
- (iii) Whether this offence can be compounded after institution of proceedings against the stock broking Company ?

(c) (i) An Appellate Tribunal consisting of two members was formed to hear the appeal preferred by Mr. Hari, being aggrieved by an Order made by the Adjudicating Authority under the Prevention of Money Laundering Act, 2002. Two members of the Bench differ in their opinion on a particular point referred in the appeal. Explain the next course of action to be followed by the Bench members under the said Act.

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(ii) Mr. Narayan willfully gives false information, refuses to give evidence and to sign statement made by him in the course of proceedings under the provisions of Prevention of Money Laundering Act, 2002. Explain the penal provisions and mode of recovery of fine or penalty enumerated under the said Act.

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2. (a) (i) The shareholders of Kumar Ltd. passed a special resolution that the affairs of the Company ought to be investigated. The Company submitted the special resolution to the Central Government. Examine, explaining the relevant provision of the Companies Act, 2013, whether the power of the Central Government to order an investigation is mandatory or discretionary ? 7
- (ii) Enumerate the procedures to be followed by the Serious Fraud Investigation Office to arrest a person who has been found guilty of an offence committed under Section 447 of the Companies Act, 2013.
- (b) An investigation was ordered by the Central Government under Section 216 of the Companies Act, 2016, against PKR Limited for determining the true membership of the Company. In connection with this investigation, it appears to the Tribunal that there is good reason to find out the relevant facts about 9% Redeemable Cumulative Preference Shares (RCPS) issued by the Company on 15.10.2017 and the Tribunal is of the opinion that unless restriction is imposed on further issue of such shares, the purpose cannot be solved. Accordingly, the Tribunal, by an Order dated 15.08.2018, directed the Company that the further issue of RCPS shall be subject to restrictions for a period of four years. Despite the Order of the Tribunal as above, PKR Limited proceeded with further issue of RCPS on 20.08.2018 in order to fund the working capital requirements for its expansion project. 5
- Referring to the provisions of the Companies Act, 2013, examine the following :
- (i) Can the Tribunal restrict further issue of RCPS ? If yes, then to what period ?
- (ii) What are the penal provisions in case of contravention to the above Order ?

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- (c) What are the powers of the Central Government under the Companies Act, 2013 regarding appeal against acquittal ? **2**
- (d) An Association registered under The Foreign Contribution (Regulation) Act, 2010 (the Act) received donation from a club registered in Singapore. The Association proposes :
- (i) To transfer 10% of the donation to "Home for Aged Society", an unregistered person and 15% to "Welfare Club" a registered person under the Act,
 - (ii) To invest portion of the donation in Chits promising high returns.
- In the light of provisions of the Foreign Contribution (Regulation) Act, 2010 decide whether the Association can carryout the above proposals and if so state the procedures to be followed under the said Act ?
3. (a) MNC Private Ltd. is a Company in which there are six shareholders. Mr. Srinath, who is a director and also the legal representative of a deceased shareholder holding less than one tenth of the share capital of the Company made a petition to the Tribunal for relief agaist oppression and mismanagement. Examine under the provisions of the Companies Act, 2013 whether the petition made by Mr. Srinath is valid and maintainable ? **3**
- (b) In the light of the provisions of the Companies Act, 2013 explain whether the following Companies can be considered as a 'Foreign Company' : **8**
- (i) A Company which has no place of business established in India, yet, is doing online business through telemarketing in India.
 - (ii) A Company which is incorporated outside India employs agents in India but has no place of business in India.
 - (iii) A Company incorporated outside India having shareholders who are all Indian citizens.

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- (c) Aggrieved by the Order of Securities Appellate Tribunal (SAT), MNO Ltd. decided to prefer an appeal with the Supreme Court. Identify the provisions governing further appeal on the Order by the Company under the provision of Securities Contracts (Regulation) Act, 1957. Also state whether any question of fact arising out of the Order of SAT can be challenged in the appeal ? **3**
- (d) Bharat Computer Hardware Ltd. received an advance payment for export of high-tech hardware to a business concern in Singapore by entering into an export agreement to supply the hardware within six months from the date of receipt of advance payment. The shipment of hardware was made after 9 months and the documents covering the shipment were routed through an authorized dealer through whom the advance payment was received. **6**
- Examine whether Bharat Computer Hardware Ltd. has discharged its obligation in accordance with the provisions of The Foreign Exchange Management Act, 1999 ?
- Is it possible to receive advance payment where the export agreement provides for shipment of goods within 15 months from the date of receipt of advance payment ? Also identify the maximum rate of interest payable on the advance payment under the said Act.
4. (a) Mr. Gopi is the Managing Director of LGB Limited. The Company wants to vacate the post of Managing Director on March 31, 2018 and appoint Mr. Lakshmikant in place of Mr. Gopi due to hands on experience and better track records. The tenure of appointment of Mr. Gopi is upto 30th June, 2022 with the condition that he will get compensation in case of early vacation of his office due to the Company's requirements. Mr. Gopi was drawing following remuneration during the last five financial years : **8**

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Financial Year	Remuneration (₹ in Lakhs)
2013-14	30
2014-15	35
2015-16	40
2016-17	45
2017-18	50

Mr. Gopi approaches you to know the amount of compensation he will be eligible to get from LGB Limited as per the provisions of the Companies Act, 2013. Advise.

What will be your answer if a person is only an ordinary director but neither the Managing Director nor a whole time director nor a manager of the Company ?

- (b) Mr. Ravi failed to pay the penalty imposed by the Adjudicating Officer for an offence committed under Securities and Exchange Board of India Act, 1992. After the penalty has become due, Mr. Ravi, otherwise than for adequate consideration, transferred his residential property to his sister and the fixed deposits with Banks in favour of his minor son. The minor son has become major and deposits continue to be held by his son.

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With reference to the provisions of SEBI Act, 1992 discuss,

- (i) Whether the residential property and fixed deposits with Banks can be attached by the Recovery Officer for the purpose of recovering the penalty ?
- (ii) Whether the Recovery Officer can seek assistance of local district administration for attaching the property ?

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- (c) A Bank issued a notice pursuant to Section 13 of the SARFAESI Act, 2002 to a Company to discharge its loan which has already become time barred under the Limitation Act, 1963. The Company did not settle the loan beyond the prescribed notice period. The Bank took recourse under Section 13(4) of the SARFAESI Act, 2002 to take possession of the building to enforce its security interest. Discuss whether the Bank will succeed in its attempt. State whether the provision of SARFAESI Act, 2002 can over ride any other law ? 2
- (d) As on March 31, 2018; the audited balance sheet of M/s Sharp Industries Limited, revealed total assets of ₹ 1 Crore. M/s Sharp Industries Limited, in the capacity of a Corporate Debtor, filed an application on July 1, 2018 with the Adjudicating Authority for initiating a fast track corporate insolvency resolution process. Explain under the provisions of Insolvency and Bankruptcy Code, 2016 the following : 4
- (i) Whether the application made by M/s Sharp Industries Ltd. for initiating a fast track corporate insolvency resolution process is admissible ?
- (ii) The time period including the extension of time period, if any, within which the fast track corporate insolvency resolution process shall be completed ?

5. (a) VGP Ltd. is a listed public Company with a paid up capital of ₹ 100 crores as on 31st March, 2018. Mrs. Jasmine, who was one of the promoters of PDS Ltd. (a Joint Venture Company of VGP Ltd.), was appointed as Woman Director on the Board of VGP Ltd. VGP Ltd has the following proposals :

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- (1) To remove Mr. Z, an Independent Director who was re-appointed for a second term.
- (2) To appoint Mr. N, a nominee Director in the Board as an Independent Director.
- (3) To appoint Mrs. Jasmine as an Independent-cum-Woman Director.

With reference to the relevant provisions of the Companies Act, 2013, examine :

- (i) The validity the above proposals and the appointment of Woman Director already made.
- (ii) Whether Mr. N, can be appointed as an Independent Director of PDS Ltd. ?
- (iii) Is an Independent Director entitled for stock option ?

(b) Rajshree Producer Co. Ltd. was incorporated on 1st April, 2010. Its paid up capital ₹ 10 Lakhs consists of 1 Lakh equity shares of ₹ 10 each held by 100 individuals. There are 6 directors on its Board. Referring to the provisions of the Companies Act, 1956, answer the following :

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- (i) What is the quorum for the Annual General Meeting ?
- (ii) What is the quorum for the Board Meeting ?
- (iii) The Board of Directors wants to co-opt one expert in the field of agronomics, as Director on its Board. Whether it is permissible ?
- (iv) Is it obligatory for this Company to conduct internal audit of its accounts for Financial Year 2017-18 ?

- (c) XY Ltd. filed a petition under Insolvency and Bankruptcy Code, 2016 with NCLT against DF Ltd. (Corporate Debtor) and the petition was admitted. There were only three financial creditors including XY Ltd. During the Corporate Insolvency Resolution process, the Corporate Debtor settled the claims of all the 3 financial creditors. Whether such settlement agreement could be termed as a valid resolution plan? Also discuss whether a financial creditor in respect of whom there is no default can file an application before Adjudicating Authority (NCLT) for initiating corporate insolvency resolution process. Discuss. 6
6. (a) The Articles of Association of a listed company provides for fixed payment of sitting fee for each meeting of Directors subject to maximum of ₹ 30,000. In view of the increased responsibilities of Independent Directors of listed Companies, the Company proposes to increase the sitting fee to ₹ 45,000 per meeting. Advise the Company about the requirement under the Companies Act, 2013 to give effect to the proposal. 4

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ABC Limited is an unlisted public Company having a paid up equity share capital of ₹ 20 Crores and a turnover of ₹ 150 Crores as on 31st March, 2018. The total number of Directors on the Board is 13.

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

- (i) The minimum number of Independent Directors that the Company should appoint.
- (ii) How many Independent Directors are to be appointed in case ABC Limited is a listed Company?

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- (b) Ronnie Coleman Ltd., a foreign Company failed to deliver some documents to the Registrar of Companies as required under Section 380 of the Companies Act, 2013. State the provisions of penalty prescribed under the Act, which can be levied on Ronnie Coleman Ltd. for its failure to deliver the documents. 2
- (c) Aggrieved by an Order of NCLT dated 05.05.2018, passed without the consent of the parties, Madhruk Ltd. decided to file an appeal before NCLAT. Meanwhile, the employees and officers of the Company went on a strike from 10.05.2018 demanding higher pay and allowances and as a result of which, the operational and management activities were badly affected. The strike was called-off on 15.06.2018. Thereafter, the appeal was filed on 25.06.2018 before NCLAT with a prayer for condoning the delay in filing the appeal. A single judicial member of NCLT started the hearing. With reference to the provisions of the Companies Act, 2013, examine the following : 8
- (i) Whether the appeal is admissible ?
 - (ii) Maximum period allowed for condonation
 - (iii) Is the appeal transferable to a Bench consisting of two members ?
- (d) The Management of Gangotri Ltd. was taken by LBV Bank Ltd. (secured creditor) complying the provisions of SARFAESI Act, 2002 and appointed two Directors. The Board of Directors of Gangotri Ltd., duly authorized by its Articles, appointed two Alternate Directors and the majority of the Directors made a declaration required for voluntary liquidation proceedings. A special resolution requiring the Company to be liquidated voluntarily by appointing an insolvency professional to act as the Liquidator was passed at the general meeting of the Company. The Board of Directors and the Shareholders passed the resolutions without the approval/consent of Directors appointed by LBV Bank Ltd. Discuss the validity of the above resolutions under SARFAESI Act, 2002. Does an unsecured Creditor have recourse to this Act ? 3

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- (e) Examine the validity of the following statements with reference to The Arbitration and Conciliation Act, 1996 : 3
- (i) Every Court would be a Judicial Authority but every Judicial Authority would not be a Court.
 - (ii) The disputes submitted to arbitration must be arbitrable.
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