

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 4

NOTE : 1. Answer SIX questions including Question No.1 which is compulsory.
2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

1. State, with reasons in brief, whether the following statements are correct or incorrect. Attempt *any eight* :
- (i) An individual who has subscribed his name in the memorandum of association of a company is necessarily a promoter of that company.
 - (ii) Underwriting an issue of share/debenture is in fact an insurance for the issue.
 - (iii) An 'officer who is in default' in terms of section 5 does not include a person deemed to be a director under section 7.
 - (iv) Sitting fee paid to the directors for attending Board meetings does not fall within the ceiling on managerial remuneration in terms of section 198.
 - (v) As per the relevant rules prescribed under the Companies Act, 1956, a Company Secretary in full-time employment has necessarily to be a member of the Institute of Company Secretaries of India.
 - (vi) An industrial company will be adjudged as sick company only when its accumulated losses in any financial year exceeds 50% of its average net worth during four previous years immediately preceding the financial year.
 - (vii) Annual general meeting of a company cannot be held on a public holiday. Therefore, it cannot be held on Sunday.
 - (viii) Minutes of a Board meeting must be duly written and signed by the chairman of that meeting within 30 days of conclusion of that meeting.
 - (ix) While making his statements under the Companies (Auditor's Report) Order, 2003, the auditor cannot skip any specified statement considering that to be inapplicable.
 - (x) Minority shareholder(s) can also be oppressive on majority.

(2½ marks each)

2. Comment on *any four* of the following :
- (i) Good investor relation today is the result of changing times and statutory obligations such as clause 49 of listing agreement, but these constitute a small part of it.
 - (ii) In matters of investigation into the affairs of a company, the Central Government has only a discretionary power to order the investigation restricted only to the concerned company.

- (iii) Utkersh, a member of your company holding 3,000 equity shares, suspects management fraud and serves a notice on your company demanding inspection of the books of account of the company.
- (iv) Section 637AA empowering the Central Government to fix a limit with regard to managerial remuneration, introduced in the Companies Act, 1956 way back in 1975, has largely lost its relevance in the present liberalised regime.
- (v) Ultimate result of insider trading is gain to unscrupulous investors at the cost of development of securities market.
- (4 marks each)*
3. (a) Describe the procedure for filing and withdrawing a petition in the matter of oppression and mismanagement.
- (12 marks)*
- (b) What are the provisions laid down under the Companies Act, 1956 for filing of accounts of receivers and reference of appointment of receivers ?
- (4 marks)*
4. (a) You are entrusted with the duty of drafting an application to a Bench of the Company Law Board. What are the basic requirements which you are to comply in drafting such an application ?
- (8 marks)*
- (b) Specify any eight powers of the Central Government under the Companies Act, 1956 which cannot be delegated to any other officer/authority.
- (4 marks)*
- (c) Under what circumstances can a company which is a plaintiff be asked to provide for costs ?
- (4 marks)*
5. (a) Happy Ltd. (HL) was merged with Very Happy Ltd. (VHL) and the authorised capital of HL was added to that of VHL in accordance with the scheme of amalgamation resulting an increase of the VHL's authorised capital. Is VHL required to pay stamp duty and apply for increase in authorised capital ?
- (4 marks)*
- (b) In a corporate debt restructuring exercise, the lenders agreed to reduce interest on loan as part of a scheme which envisaged reduction of the borrowing company's capital by a certain percentage. The scheme has been approved by the Board and shareholders of the company. However, if the reduction of capital is confirmed by the High Court, the promoters' stake will go up. Will the High Court confirm the capital reduction ?
- (4 marks)*

- (c) Your company is contemplating appointment of Biswas as a director and he is not a director in any other company. As the Company Secretary, advise Biswas as to the need for obtaining a Director Identification Number (DIN).
(4 marks)
- (d) (i) What constitutes overriding preferential payments in a winding-up ?
(2 marks)
- (ii) The liquidators of Lazy Ltd. have received Rs.50 lakh from disposal of assets which constituted security for creditors. Indicate how this amount will be distributed among the following dues :
- | | |
|--|------------|
| Uncontested sales tax | Rs.2 lakh |
| Municipal taxes due | Rs.2 lakh |
| Unpaid wages for 3 months
period preceding winding-up | Rs.15 lakh |
| Secured creditors | Rs.60 lakh |
- (2 marks)
6. (a) "Successive corporate failures are responsible for emergence of the concept of 'corporate governance'." Discuss.
(8 marks)
- (b) Who is a 'dissenting shareholder' in a scheme or contract of amalgamation under section 395 ? Discuss the position of a dissenting shareholder in such a scheme or contract.
(8 marks)
7. (a) "Declaration of solvency has to be filed after passing of a resolution on the subject but before buy-back." Comment.
(4 marks)
- (b) Prepare a check-list for filing of 'declaration of solvency' in case of buy-back of securities.
(6 marks)
- (c) How is election of directors dealt with by the Canadian company law ?
(6 marks)
8. (a) Amar Ltd. has a wholly owned subsidiary, Bhushan Ltd., which is engaged in the business of manufacturing auto components. Amar Ltd. and Castings Ltd. enter into an agreement under which the entire shareholding of Amar Ltd. into Bhushan Ltd. is to be transferred by Amar Ltd. to Castings Ltd. Advise whether compliance with section 293(1)(a) is required.
(8 marks)

- (b) Action has been initiated against a director of your company for misfeasance and breach of trust. As a Company Secretary of the company, what advice would you give him so that he can obtain relief ?

(4 marks)

- (c) Weak Ltd. (WL) invited and accepted deposits from Dayavan and utilised the same for working capital requirements. Unfortunately, WL became sick and a reference was made to BIFR which commenced necessary steps. However, Dayavan approached the Company Law Board (CLB) for relief under section 58A(9) and an order was passed for repayment of deposits. WL appealed against the order citing the Sick Industrial Companies (Special Provisions) Act, 1985. Can the order of CLB be enforced ? Give reasons.

(4 marks)

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