

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 10

NOTE : Answer ALL Questions.

1. (a) Raj, is the promoter and director of Alpha Pvt. Ltd., a closely held company. He and his HUF owns 17.58% of equity, whereas his brother Saj along with other shareholders owns 82.42% of equity. Over a period of time, differences arose between them and an Extraordinary General Meeting (EGM) was proposed to be held on March 15, 2020 for removal of Raj from the Board of Directors of the company. Raj filed a petition before the NCLT and the NCLT allowed the holding of the EGM, but put a condition that the resolution passed thereat to be permitted by it, by ex-parte interim order dated March 14, 2020. More than two years elapsed since the Order, but the company petition could not be decided. Taking advantage of the interim order, Raj representing himself as a director of the Company had taken various steps which were detrimental and prejudicial to the interest of the Company and its shareholders. In this background, Saj and group of shareholders moved the application for holding an EGM under chairmanship of a person appointed by the Tribunal. After considering the submissions, NCLT passed an order allowing the application. Raj, aggrieved with this order, filed an appeal against the impugned order. In the light of judicial pronouncement, comment whether appeal against the impugned order would be allowed or dismissed. (5 Marks)
- (b) Group of MSME (Micro, Small and Medium Enterprises) traders who rely on trade of smartphones and related accessories, informed Competition Commission of India (CCI) that many such traders regularly list their smartphones for sale on online market-places to take the benefit of online distribution channels. Dkart and Pzon are online

marketplaces operating as a platform facilitating third party sellers to sell their goods to consumers on its online marketplace. The informant states that there are instances of several vertical agreements between Dkart, Pzon with their respective preferred sellers which have led to foreclosure of other non-preferred traders or sellers from these online marketplaces. It has been alleged that most of these preferred sellers are affiliated with or controlled by Dkart or Pzon, either directly or indirectly. They requested CCI to order for investigation in view of the aforesaid facts.

In the light of judicial pronouncement, analyse and comment whether Director General of CCI would order an investigation.

(5 marks)

- (c) Pioneer Finance Ltd., is a Non-Banking Finance Company (NBFC) registered with the Reserve Bank of India (RBI). The object clause of its Memorandum states that the Company shall provide finance to public at interest, against security of gold ornaments. Atul, a shareholder of the Company is a Practising Chartered Accountant. While going through the Annual Report and Financial Statements of the Company, he observed that the Company had good amount of advances under the heading of unsecured creditors, which is contrary to the provisions of its object clause of the Memorandum. Atul made an application before the National Company Law Tribunal (NCLT) praying for perpetual and mandatory injunction to restrain the Company from making such unsecured advances. The Company pleaded that the rule of majority will prevail. Based on the above facts, comment whether Atul's application is tenable ?

(5 marks)

- (d) Cars & Rides Ltd., is a company engaged in the trading of second-hand cars of any make. In the year 2020, it made an Initial Public Offer (IPO) of equity shares having face value of ₹10. Of which ₹5 as first call was only called for in the IPO. The paid up share capital of the Company consists of ₹1000 lakh. The proceeds

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of the IPO were to be utilised for the purpose of development of the on-line trading platform through Website / Mobile App, but the Company diverted the proceeds to purchase a flat for its Managing Director. During the course of the general meeting of the shareholders, the fact of the diversion of funds came to notice of some of members and they threatened the management of the Company to file a case of oppression and mismanagement. The Company demanded the second and final call of remaining amount of ₹5 due on equity shares from the members soon after the conclusion of the general meeting. Some of the members decided not to pay the second and final call, but to file a case of oppression and mismanagement against the Company.

In the background of Companies Act, 2013, evaluate whether the members will succeed.

(5 marks)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (a) Paras is a bank employee and is an expert in handwriting and identifying signatures. Due to annual job rotation, he was assigned the task of identifying and comparing signatures on cheques of the drawer. Only upon his confirmation, cheques were further processed and cleared for payment. In his regular task, he clears one cheque for processing, it was later identified that the signature on that cheque was not done by the drawer but was forged. Since signature was very resembling to the signature in bank's records, he cleared the same resulting in loss to bank. Bank Manager lodged a complaint against him for cheating under Indian Penal Code, 1860 (IPC).
Is the contention of Bank Manager valid under IPC ?

(4 marks)

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- (b) You are Company Secretary of Parshvan Potash Ltd., a Company engaged in producing pesticides. Draft a brief note to be circulated to the Board of Directors, about the importance of management of Environmental, Social and Governance (ESG) Risks.
(4 marks)
- (c) Tamanna aged 21 years, has been arrested for a cognizable and non-bailable offence punishable with imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. She proceeded for bail before the Court.
State whether she would succeed.
(4 marks)
- (d) Ron, a GST Inspector, seized invoice books, audited financial statements, all purchase invoices of assessee for last 2 years and driving license of Sukesh during search and seizure proceedings. Ron issued demand notice after going through all the invoices, payment challans and input credit related documents. Sukesh demanded Ron to return his driving license arguing that driving license has no role in issue of GST demand notice. But Ron is of the view that all the documents, books or things seized during search and seizure cannot be returned back unless assessment is completed.
State whether Sukesh's demand is valid under the Central Goods and Services Tax Act, 2017.
(4 marks)

OR (Alternate question to Q. No. 2)

- 2A. (i) "Public prosecutors are different from Company Prosecutors. They are independent, unbiased and impartial while conducting prosecution." Comment. (4 marks)
- (ii) "Articles of the company are the protective shield for the majority of shareholders." Comment. (4 marks)

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(iii) “There is a paradigm shift in initiation of a case before a consumer commission in cases of mis-selling from erstwhile Consumer Protection Act, 1986, to the new law, the Consumer Protection Act, 2019, which establishes new regulator in the regime of consumer protection.” Elucidate. (4 marks)

(iv) “The Company Secretary has a vital role to play in the event of invocation of any action under the Companies Act, 2013.” In light of this statement, outline the role of Company Secretary.

(4 marks)

Attempt all parts of either Q. No. 3 or Q. No. 3A

3. (a) State whether the following offences under the Companies Act, 2013 are compoundable.

If yes, also mention compounding authority :

(i) Tampering with the minutes of the proceedings of meeting.

(ii) Failure to keep proper financial statements.

(iii) Failure to disclose director’s interest and participation in Board meeting by interested director.

(iv) Failure to provide information, books or papers etc. to inspector during investigation. (4 marks)

(b) “Commitment to anti-corruption enforcement is on the rise across the globe.” Elucidate with reference to Foreign Corrupt Practices Act, 1977. (4 marks)

(c) Maha Tyres Ltd. (MTL) intends to amalgamate with Link Road Tyres Ltd. in order to have exponential growth. After the merger MTL will acquire monopoly status in northern region of India. MTL filed an application before the Competition Commission of India (CCI) for its approval. The CCI conducted an investigation of combination under the Competition Act, 2002.

Explain the procedure for investigation of combination by the CCI. (4 marks)

- (d) “Mediation and conciliation are all basically non-adjudicatory dispute resolution processes.” State briefly the disadvantages of adjudicatory process which has led to rise of mediation and conciliation process.

(4 marks)

OR (Alternate question to Q. No. 3)

3A. Write short notes on :

- (i) Insolvent trading.
- (ii) Factors which Competition Commission of India considers while determining “relevant geographic market” and “relevant product market”.
- (iii) Rectification of mistake by NCLT on *Suo moto* basis.
- (iv) Authorities and mode of communication with the assesseees under Faceless Assessment as per Income Tax Act, 1961.

(4 marks each)

4. (a) In exercise of its powers, the Central Government directed investigation into the affairs of Xioman Ltd., by officers of Serious Fraud Investigation as nominated by Director, SFIO. Accused were accordingly arrested and Judicial Magistrate granted remand and directed that they be produced before Special Court. Thereafter, the accused were produced before Special Court with a fresh application for remand. The prayer for extension of custody was opposed by the accused *inter alia* on the grounds that the period of completion of investigation as stipulated in the order being mandatory in nature has expired and as such all further proceedings were illegal and without any authority of law.

In the context of a judicial pronouncement, comment whether extension of custody is justified ?

(4 marks)

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- (b) Gama Ltd. issued purchase orders and paid advance for import of steel used in its manufacturing. In the meantime, as new Managing Director took charge of the Company, the finance and procurement teams were busy in briefing him about the Company's processes. Though the raw material arrived in India, the Company failed to submit bill of entries. Thus, the goods for which foreign exchange was remitted had reached the destination, but the same were not released and kept in bonded warehouse. Adjudicating Authority under the Act imposed penalty on Managing Director and the Company.

Explain whether this transaction constitutes contravention of the provisions of FEMA Act, 1999 and whether Managing Director can escape the penalty ?

(4 marks)

- (c) A group of creditors of Dodlab Trading Ltd. made a complaint to the Registrar of Companies (RoC), Bangalore alleging that the management of the Company is indulging in destruction and falsification of the accounting records. The complainants request the RoC 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 AM on July 1, 2021 and the RoC entered the premises at 10.30 AM for the search.

State the powers of the Registrar to seize the books of the Company.

(4 marks)

- (d) Anmeda Ltd., is a listed company with consistent track record of profitability and 15% growth. Though there have been consistent profits, the Company did not declare any dividend or bonus for the last 10 years. Some of the members, who usually attend the general meetings of the Company raised such questions before the directors. They had also made written representation to the Company Secretary of the Company

as well. Some of the members approached a Practising Company Secretary to seek opinion for filing a case before the NCLT for oppression and mismanagement on the part of the Company, for not paying any dividend/bonus for the past so many years.

Is the member's contention tenable ?

(4 marks)

5. (a) Yasho Fashions Ltd., a Company floated by Yasho, a graduate from NIFT, Mumbai was initially formed to set up a retail store of niche boutiques. As part of growth plans, the Company had received funding from Venture Capital (VC) fund. Initially, the equity was held by Yasho, her family and the VC fund, but for organic growth, the Company came out with the Initial Public Offer (IPO) in the December 2019, which received great response. Soon due to the pandemic, the Company's business was not doing well. The share price dwindled to ₹50-55 as against its listing price of ₹500 per equity share. Many of the investors lost their money. Meanwhile, the Company recruited some technicians and also engaged some artists and paid them off the signing amount, with a plan of making big on OTT platforms. Some of the members of the Company thought it was an ultra vires act and they wanted to restrain the Company.

As a Practising Company Secretary, advise the members of the Company :

- (a) Whether they can file a suit on the Company and
 (b) Whether they can get the Company restrained from venturing into new businesses or doing ultra vires acts.

(8 Marks)

- (b) Roma is a Professor of Corporate Laws in a reputed Management College in Chennai. She enrolled herself in the Independent Directors Databank maintained by the Indian Institute of Corporate Affairs (IICA). She also passed the Online Proficiency, Self-Assessment Test conducted by the IICA. She received an offer to be an independent

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director on Board of Megan Ltd., a Company listed on BSE. She intends to join the Company, but has some hesitation on account of the risk associated with the directorship. Roma reaches out to you, the Company Secretary of the Company, explaining her apprehensions. You explain to Roma, that Megan Ltd, has taken Directors & Officers (D & O) policy for its directors. Roma, wants to understand further about D & O policy and request you to send her a document covering various aspects she should be conversant about D & O policy.

Prepare a short note to be shared with Roma about D & O Policy.

(8 marks)

6. (a) Adventure Voyage Ltd. is a company engaged in the business of providing travel related services to its customers. It has its own boats and ships and provides adventure tours through sea route from Chennai and Kolkata in luxury ships. The Company availed a loan of ₹50 lakh from a bank, but due to non-payment, the bank had declared its promoters and directors as wilful defaulters. Since the Company was not able to raise any finance from the bank, the Company decided to issue non-convertible debentures aggregating ₹ 100 lakhs on private placement basis. The Company collected the desired amount without seeking any approval of SEBI in this regard. One of the persons, who came to know that the Company has not sought any approval from the SEBI, made a complaint in writing to the SEBI.
- Is SEBI's approval required for such issue of non-convertible debentures on private placement ? Does SEBI have powers for inspection ?

(4 marks)

- (b) Lavish Cosmetics Ltd. is engaged in the business of the making and trading of luxury cosmetic items. The paid-up share capital of the Company is ₹50 crores (face value ₹10 per share). The Board of directors of the Company decided to reduce the paid-up share capital to ₹40 crores. The Company passed a special resolution to this effect in the general meeting of the shareholders and filed an application with the Tribunal for confirmation. The Tribunal directed to provide a list of the creditors and

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a confirmation that creditors have no objection for reduction of the paid-up capital. The Chief Financial Officer (CFO) did not disclose the names of some of the creditors, who could have objected to the reduction. The Tribunal presuming that there is no objection from all the creditors, confirmed the reduction of the capital. The aggrieved creditors represented the same before the Securities Appellate Tribunal and the matter of concealment of information by CFO was identified.

What are the consequences of such concealment of information by the CFO ?

(4 marks)

- (c) Nice Foods Pvt. Ltd. is a company engaged in food delivery business. It collects deliveries from different restaurants in the Mumbai as per the orders of the customers and delivers it to their door step. There was a news report in the media which alleged that the Company collects personal information like name, address, mobile number, e-mail, choice of foods etc., from the customers and sells that data to other companies. You are the Company Secretary of the Company and the CEO seeks your inputs to address this issue proactively.

Outline your strategy to handle such matters.

(4 marks)

- (d) “Over the past several years, corporate India has become much more engaged with and sensitized to Enterprise Risk Management.” Explain briefly the significant challenges which Indian boards face in designing and implementing an effective ERM system.

(4 marks)

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