

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 8

NOTE : Answer ALL Questions.

**PART — A**

*Attempt all parts of either Q. No. 1 or Q. No. 1A*

1. (a) ADN Ltd. an Indian Listed Company in real estate segment has participated in International Competitive Bidding process and successfully selected as L1 bidder for development of Air Linkage Bridge over the Arabian Sea for Saudi Arabian Country. The total contract value is USD 40 Million and tenure of the contract is 3 years. As per audited financial statements for financial year 2020-21, the networth of ADN Ltd. is ₹ 15,000 Crore (USD 2000 Million, assume ₹ 75 per dollar). ADN Ltd. is willing to complete the project in Joint Venture with AL-Habibi inc. a Dubai based Company in real estate business since last 25 years by overseas investment after entering into a Joint Venture Agreement. The Statutory Auditor of the Company makes the statement that Indian Company is prohibited from making investment in a foreign entity engaged in real estate business.

In this case, as a Company Secretary of the Company, answer the following :

- (i) Whether ADN Ltd. can make direct investment outside India through Automatic Route or not. Whether RBI approval is required ?
- (ii) What are the maximum investments permissible in this case ?
- (iii) In case of 50% acquisition of shares of AL-Habibi inc., whether any valuation is required ?
- (iv) In case of such transaction (investment in joint venture), which form is required to be filed in RBI and when ?
- (v) How the transaction is made for such investment ?

(1+1+1+1+1=5 marks)

: 2 :

(b) ABC Pvt. Ltd. is a subsidiary company of a XYZ Ltd. having a paid up capital of ₹ 60 Crore and Turnover of ₹ 180 crore as per the audited balance sheet as on 31st March, 2021. Referring to the provisions of the Companies Act, 2013, answer the following :

- (i) Whether the ABC Pvt. Ltd. is obliged for conducting of secretarial audit ?
- (ii) Whether the Cost Accountant in Practice who is also a Company Secretary can be a competent professional for the appointing as a 'Secretarial Auditor' ?
- (iii) To whom the secretarial audit report is required to be addressed ?
- (iv) In which prescribed form secretarial audit report is required to be submitted by the auditor ?
- (v) What are the penal provisions, if Secretarial Auditor doesn't comply with the provisions of section 143 (12) of the Companies Act, 2013 ?

(1+1+1+1+1=5 marks)

(c) You are appointed as Secretarial Auditor by ESB Ltd, a Listed Company to conduct the secretarial audit for financial year 2020-21. While carrying out the audit, it was found that Company has made the following major activity :

- (i) Company has issued the Employee Stock Option for 20 lakh equity shares.
- (ii) Company has issued 50000 Sweat Equity Shares to X, the promoter and co-founder of the Company.
- (iii) Company has bought-back the preferential shares amounting ₹ 900 crore.
- (iv) Company has also raised a fund of ₹ 1500 crore through public deposit.
- (v) Company declared the final dividend of ₹ 14.00 for equity share in its Annual General Meeting held on 26th August, 2020.

In each of above event, describe the indicative list of documents to be checked.

(1+1+1+1+1=5 marks)

: 3 :

(d) R Company Ltd. incorporated on 16th December, 2020. The Company adopted its first financial year as from 16th December, 2020 to 31st March, 2021. The profit and loss account prepared in accordance with the Schedule III of the Companies Act, 2013 has shown net profit. The company is willing to declare 25% interim dividend at their meeting to be held on 25th June, 2021, before holding its first Annual General Meeting (AGM). The Board of directors seeks your advice on the following aspects as per the provisions of the Companies Act, 2013 :

- (i) Whether it is in order to declare the interim dividend and company has complied due diligence with respect to it ?
- (ii) What are the penal provisions in case of failure to pay the interim dividend once it is declared by the Board ?

(5 marks)

(e) Immediately upon conducting the last general meeting held in August, 2020, the Chairman went abroad for medical treatment. Due to non-availability of the Chairman, the minutes of the said meeting could not be signed by him. To meet the requirements of law, he sent a letter of authority to the 'A' the Director of the company authorizing him to sign the minutes on the former's behalf. Can the 'A' act on the letter of authority ? What are the provisions with respect to signing of the minutes of general meeting with specific reference to Secretarial Standards – 2 ?

(5 marks)

***OR (Alternate Question to Q. No. 1)***

1A. (i) The date of approval of Financial Statements by the Board of Directors of PQR Ltd. is 17th July, 2020 and the date of notice of Annual General Meeting (AGM) is 11th August, 2020. CFO of PQR Ltd. has advised that the time gap between date of approval of financial statements by the Board of Directors and the date of Notice of AGM should be 30 days. The Directors have approached you as Company Secretary to advise them regarding the same with specific reference to the provisions of Companies Act, 2013.

(5 marks)

: 4 :

- (ii) What are the powers vested with Board of Directors under section 179(3) of the Companies Act, 2013 ? Can any power be delegated to any authority, if so, elucidate. (5 marks)
- (iii) Prepare the Checklist as per Secretarial Standard on General Meeting (SS-2) for the following items :
1. Conduct of Voting through Electronic Mode
  2. Adjournment of Meeting
  3. Preservation of Minutes and other Records
  4. Chairman
  5. Reading of Reports
- (1+1+1+1+1=5 marks)
- (iv) List out the check points to be observed by Company Secretary in practice while conducting the Secretarial Audit with regard to issue and redemption of preference share under section 55 of the Companies Act, 2013. (5 marks)
- (v) LMN Ltd. incorporated with paid-up capital of ₹ 40 Crore. During the financial year 2019-20, the paid-up capital was increased by ₹ 30 Crore. The Company Secretary advised that Company needs to appoint the Secretarial Auditor for Financial Year 2020-21. Due to festive season, few Directors were not available, hence Managing Director suggested to pass the requisite resolution by circulation for appointment of Saxena & Co., Company Secretaries as Secretarial Auditor. Check the validity of suggestion of Managing Director. (5 marks)

**PART — B***Attempt all parts of either Q. No. 2 or Q. No. 2A*

2. (a) MNF Software Ltd. entered into a Non-Disclosure Agreement with RST Broadcast Ltd. As per the agreement, MNF Software Ltd. requires to maintain the software for media publishing. MNF Software Ltd. was restricted to disclose the Confidential Information. Define the meaning of 'Confidential Information' in Non Disclosure Agreement. (5 marks)

: 5 :

- (b) As on 31.03.2021, the composition of Board of Management of Happy Hotels Ltd., an unlisted Public company comprising of 8 members is as under :

SN	Name	Designation
1	A	Executive Chairman and Managing Director
2	B	Executive Director and CEO
3	C	Executive Director (Finance)
4	D	Independent Director
5	E	Independent Director
6	F	Independent Director (Woman Director)
7	G	Nominee Director of Popular Finance Corporation Ltd.
8	H	Company Secretary.

As on 31.03.2021, the present Audit Committee comprised of the following directors as members :

SN	Name	Designation
1	A	Chairman of the Audit Committee
2	B	Member
3	C	Member
4	F	Member

The company is planning to list its shares on a recognize stock exchange.

Referring to the relevant provisions, comment whether the present Audit Committee is in order as per Companies Act, 2013 and it can continue post listing of its shares in the stock exchange if not, constitute the Audit Committee, with the above mentioned directors in complying the requirements of SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015.

(5 marks)

- (c) V Ltd and A Ltd. both dealing in drugs and chemicals have entered into an agreement to jointly promote the sale of their products. A complaint has been received by the Competition Commission of India (CCI) stating that the agreement between the two companies are anti-competitive and against the interest of others in the trade. As a professional and an expert, examine with reference to the relevant provisions of the Competition Act, 2002, the different factors that needs to be taken into account by the CCI while determining whether the agreement in question will have any appreciable adverse effect on competition in the market.

(5 marks)

**OR (Alternate Question to Q. No. 2)**

- 2A. (i) Why the Data Room is required ? What type of information is maintained in the Data Room ?
- (ii) Subir is a newly startup and set up a factory recently in Greater Noida which is causing air pollution by releasing fly ash and discharging steam. This cumulatively caused inconvenience and discomfort to the people of that locality. A complaint was filed by the people. A notice was served by the state government to provide the 'Risk Analysis Matrix'. Subir has requested you as a professional to guide him for preparing of Risk Analysis Matrix.
- (iii) Effective compliance program should have ability to monitor audit compliance in a 'real time manner'. To facilitate this, explain the role of Information Technology in compliance management.

*(5 marks each)*

3. (a) Bank of STV is contemplating to infuse the capital to meet the requirement of the BASEL Norms. In this context, bank is proposing to issue additional equity shares of ₹ 10,000 crore having a face value of ₹ 10 each via Qualified Institution Placement allotment (QIP). The bank has provided you the following inputs extracted from the latest audited Balance sheet as at 31st March, 2021 :

Sr No.	Particulars	Amount (₹ in Crore)
1.	Equity Share Capital of Rs. 10 each	20,000
2.	Reserve and Surplus	10,000
3.	Long Term Borrowings	40,000
4.	Current Liabilities & Provisions	20,000

In the light of the relevant provisions of the SEBI (ICDR) Regulations, 2018, advise on the following aspects :

- (I) What would be the conditions for qualified institutions placement ?
- (II) Whether Bank would be eligible to raise this amount of funds through QIP ?
- (III) Whether it would be possible to allot entire issue to three allottees ?

*(3+3+2=8 marks)*

: 7 :

(b) Fact of the case is as under :

LDF launched a Group Housing Complex (The Belaire) in Gurgaon, planned to construct 5 multistoried residential buildings. It was alleged that various clauses of the house agreement had imposed unilateral and one sided clauses. The informant filed an instant case under Section 19(1) (a) of the Competition Act, 2002.

Whether informant will succeed and is there any contravention of provisions of the Competition Act, 2002 ?

Give your answer supported by decided case.

(7 marks)

4. (a) You are Company Secretary of D3-D Productions Ltd. The Managing Director requires you to prepare a note on the various obligations of the Company as the company has made Public Announcement (PA) for acquiring the controlling interest of Sunny Productions Ltd. Explain the obligation of Company in this regard as per Regulation 26 of SEBI (SAST) Regulations, 2011.

(5 marks)

(b) Under what circumstances, the Secretarial Auditor will report that there is diversion of the Fund.

(5 marks)

(c) Prepare a List of Foreign Currency Exposures with Source for verification on the following points :

1. Advance payments received against exports (exports not taken place)
2. Loans extended in Foreign Currency
3. Interest Rate Swaps and Forward Rate Agreements
4. Foreign Currency Convertible Bond (FCCB)
5. Post shipment credit in Foreign Currency.

(1+1+1+1+1=5 marks)

5. (a) Write the short notes on the following :
- (i) Inspection of Register of Charges.
  - (ii) Exemption available for securities listed at SME exchange.
  - (iii) Risk Management Committee in case of listed entity.
- (3 marks each)*
- (b) Distinguish between the following :
- (i) Relevant Geographic Market and Relevant Product Market.
  - (ii) ISO 14001:2015 and ISO 14004:2016 on environmental management systems.
- (3 marks each)*
6. (a) ‘The successful merger demands that strategic planners are sensitive to the human issues of the organizations’. For this purpose, as a Practising Company Secretary outline the different checks which are to be made consistently.
- (b) You as a practising Company Secretary has been approached by Popular Bank to carry out due diligence regarding the loan of ₹ 50 crore to be given to Weak Ltd. How would you find that the company has misused borrowed funds from banks/ financial institutions from the purpose for which they were borrowed and there has been Siphoning of Fund ?
- (c) A company “issuer” was in the process of making an offer to Right Issue of the specified securities. All the process was completed and the arrangement was complete. Ms. Madhu, a director of the company was categorized as a “willful Defaulter” by a Bank in accordance with the guidelines issued by the RBI. Advise the “Issuer”, whether it can proceed to offer the securities through the Right Issue. Will your answer differ, had it been a Public Issue ?
- (5 marks each)*