Roll No. ....

OPEN BOOK EXAMINATION

Time allowed : 3 hours ***Maximum marks : 100***

Total number of questions : 6 ***Total number of printed pages : 11***

NOTE : *Answer* ***ALL*** *Questions.*

1. Read the following case study and answer the questions given at the end :

Happy Living Bank, a smaller national bank based in State of Bihar, opened its first out-state branch in Jharkhand in 2009. The branch was opened for a variety of reasons. This would be a significant step toward Happy Living's goal of becoming a national bank.

Having a presence in India would enable the bank to better support its Biharian stakeholders while also generating additional revenue from mostly India-based Biharian-owned, but also linked, businesses. Although the majority of Happy Living's customers were small and medium-sized businesses, many of them had national operations. Furthermore, having certain personnel based in other states would allow the bank to keep up with Indian banking trends better.

Managers at Happy Living were well aware that the competition for Biharian clients in India was fierce. Many Bihari banks have well-established operations in India, some of them substantially larger than Happy Living. Nonetheless, they believed it was the appropriate time to launch all India based offices because many tiny businesses were having trouble acquiring finance as a result of the financial crisis.

Jharkhand was chosen as the location for the branch because it was India's developing industrial and money centre-based state, and because the Jharkhand-Patna area had a significant concentration of Biharian-owned and operated enterprises.

The Jharkhand branch of Happy Living was a wholesale operation. The main purpose was to lend Indian Rupees to Biharian or Indian-based businesses. To reduce the risk of other state deposit withdrawals, the branch had to raise all of its funds from the all-India money markets, with the exception of a tiny capital contribution from Happy Living Bank. For the convenience of Happy Living's other states clients, only a few retail accounts were kept.

To help establish the retail part of the firm, no special services were supplied. Cheque clearance was outsourced to a large Indian bank situated in Jharkhand. The bank’s management – Hitesh Shukla, a former account manager for Happy Living, Madhupuri – has been promoted as senior manager of the Jharkhand branch. Shukla swiftly engaged five experienced account managers who had previously worked for other Indian banks and had a track record of success. Clients in need of loans were identified by the account managers.

The majority of the time, the account managers were given specific geographical regions to grow. Two were on the East Side, two on the West Side, and one in the Central Business District. Two of the account managers, on the other hand, had extensive past industry experience and were tasked with generating possibilities with a few carefully selected prospective clients in those industries who were located beyond their assigned territory.

Shukla was well aware that the account managers he selected had a variety of business backgrounds and operational methods, but he was unconcerned. He only imposed a few restrictions on their operations. He assured the account managers that he didn’'t mind how they found and nurtured their clients as long as they ‘‘booked good deals’’ ultimately.

Shukla set up each account manager as a “mini profit centre’’ for monitoring and incentive purposes. The interest generated on the loans initiated was credited to their profit centres, and they were charged for the expenses involved, including the cost of funding the loans. Although this was not the technique employed by Happy Living Bank, Shukla believed that such a system was necessary to foster account managers’ entrepreneurialism, which would be required to swiftly expand the branch.

Contd. ....

The account managers were paid a bonus of 10% of the aggregate profits created in their small profit centres each year, in addition to their base salary, which were significantly below comparable bank averages, according to branch studies. They were not penalised for annual losses, but it was recognised that losses would not be permitted over long periods of time. Shortly after the fiscal year ended, the bonuses were paid out in full in cash. Shukla believed that after the account managers had expanded their loan portfolios to their desired levels, their overall compensation would be competitive with established banks.

Shukla had hoped that when the branch grew, he would be able to set targets for each account manager and reward them for meeting them, but he didn't have enough understanding of the market potentials or the account managers' capabilities to do so during the start-up phase.

He was concerned that in the wholesale banking market, short-term profits were merely an imperfect measure of performance. For one thing, the loans were normally given for 5 to 10 years, and no loan was ever given with a 100% possibility of default. However, he believed that the primitive infrastructure in place would suffice throughout the branch's first stages. Over time, a more complicated reward system would most likely arise.

Account managers needed to be able to effectively manage their time. The quantity of potential clients was enormous across all geographical boundaries. However, the competition was fierce. Many Biharian banks had already established themselves in India, and other Biharian-oriented firms had also raised funds from non-Biharian banks. The account managers at Happy Living have to discover and solicit business from their top prospects.

Businesses who desired larger loans with higher margins and, more significantly, the ability to repay the loans were the ideal clients. The account managers had to factor in both the costs of locating prospects, researching their conditions, and drafting loan applications, as well as the likelihood of the loans being accepted.

The account managers created a credit application package, after identifying loan prospects. A description of the client and its business, the anticipated use of the loan funds, the proposed loan terms (e.g., size, payments, fees, security, covenants), and an appraisal of the loan's risk were all required in the loan application package. Risk was dealt with in a variety of ways.

Shukla may approve applications for loans of less than rupees ten lakh. If the proposed loan amount was greater than rupees ten lakh, the application had to be authorised by the branch's Credit Committee, which included Shukla, the branch's CFO/treasurer, and two of the branch's most experienced account managers. If the loan amount is greater than ₹ 5 lakh, the Happy Living Bank Corporate Credit Committee in Madhupuri must additionally approve the loan before it can be made. Management, national bank examiners, and external auditors assessed loans on a regular basis after they were made. Clients were also watched on a regular basis by management for symptoms of potential difficulties, which might be suggested by Management, national bank examiners, and external auditors assessed loans on a regular basis after they were made. Management also kept a close eye on clients for signals of potential issues, such as declining business conditions, covenant violations, and late payments.

A loan application that was turned down in early 2020, Jimit Patel, an account manager assigned to the southern India area, presented a credit application for Far East Trading Corporation (FETC), a corporation with major business interests in Bihar, for a ₹ 11 lakh, seven-year term loan. A 1% closing charge and a variable rate of 5% above prime lending rate were included in the pricing of loan. Inventory was used to fully secure the loan. Because of the size of the loan, Jimit took great care in evaluating and assessing the application.

He liked it : “I thought this was a wonderful offer for Happy Living,” he said. We were going to make good money during the life of the loan because I priced it with a relatively wide spread. FETC is a reputable organisation that has been around for a long time and has a knowledgeable management team. Despite the current economic downturn, they have discovered good commercial prospects. As a result, I came to the conclusion that the loan was quite low risk.

The loan was immediately accepted by the Branch's Credit Committee, which Jimit was not a member of Committee members remarked at the time that Jimit's application was well-prepared, and that they trusted Jimit's judgements on the deal's merits. Jimit was one of the more experienced account managers on the team. Before joining Happy Living's Jharkhand branch, he worked for two big Indian banks for long years.

The application had to be authorised by the Corporate Credit Committee in Madhupuri because the loan's proposed value exceeded ₹ 5 lakh. Jimit participated in part of the corporate committee meeting by telephone. Jimit was questioned by the committee members, who sought answers as well as more information. Jimit believed he had successfully answered all of the inquiries.

However, Jimit and Shukla were informed a few days later that corporate had opted against making the loan. The issue, according to the committee spokesman, was not with Jimit's analysis or the loan terms.

Certain members of the Credit Committee were concerned because they had learned that FETC was involved in some transfer pricing conflicts with the tax authorities. These disagreements could result in lengthy legal fees, possibly substantial fines, or a costly settlement. When it came time to vote on this application, a majority of the committee members decided to err on the side of caution because they couldn't confirm the claims and didn't know if the legal settlements, if any, would affect FETC's ability to meet its cash flow requirements.

Evaluate Happy Living Bank's system and justify your comments :

(*a*) What makes a good account manager ?

(*b*) Did Jimit Patel do a good job and what would your observation of Jimit ?

(*c*) Is the bank's control system effective ?

(*d*) What will the control system look like in 10 years, say, assuming the branch is significantly larger ?

(*10 marks each*)

2. (*a*) M/s. Alpha LLP with M/s. Beta Pvt. Ltd., and their respective partners, shareholders, and creditors proposed to be amalgamating Alpha (Transferor) with Beta (Transferee). The petition for joint company; under section 230 to 232 of the Companies Act, 2013, and Companies (Compromises, Arrangements, and Amalgamation) Rules, 2016 and National Company Law Tribunal Rules, 216; before National Company Law Tribunal (NCLT), Delhi. Alpha is incorporated on 4th February, 2016 under the provisions of Limited Liability Partnership (LLP), Act, 2008 and its registered office in Delhi. Beta is a private limited company incorporated on 12th February, 2017 under the Companies Act, 2013 and having its registered office in Delhi. Alpha and Beta are engaged in the establishing and/or acquiring Health care related products.

NCLT found that all statutory requirements have been fulfilled as per Companies Act, 2013. NCLT also discovered that LLPs can be incorporated into a company under Section 394(4)(b) of the Companies Act, 1956, but that no such provision exists in the Companies Act, 2013. Because section 234(2) of the Companies Act, 2013 allows a foreign LLP to combine with an Indian business, it would be incorrect to assume that section 234(2) of the Companies Act, 2013 forbids an Indian LLP from merging with an Indian company.

By the assailed order, the NCLT applied the Casus Omissus principle and authorised the merger of Alpha and Beta. (*6 marks*)

(*b*) Ajay Oza was a director in several companies and was barred from being appointed or reappointed as a director for a term of five years under Section 164(2)(a) due to a failure by one of the firms to file annual returns and financial statements for the financial year 2015-17. In 2018, the list of directors that were disqualified was made public. Before the Gujarat High Court, Ajay challenged the list of disqualified directors for defaults in the financial years 2013-15 and 2014-17.

Was there a requirement to provide prior notice and an opportunity to be heard before publishing the list of disqualified directors ?

(*6 marks*)

3. (*a*) M/s. Suraksha Ltd. is aggrieved by the impugned order of the National Company Law Tribunal (NCLT) Mumbai Branch, pursuant to which Zamaria Bank's application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) was admitted, a moratorium was imposed, and an Interim Resolution Professional was appointed with specific instructions. The Zamaria Bank claimed that the Suraksha had defaulted to the tune of ₹ 28.15 crore before the NCLT. Suraksha was granted facilities consisting of cash credit, term loan, and bank guarantee totaling 14.69 lakh by Zamaria Bank on the basis of a 'sanction letter' dated December 26, 2015, in terms of which Suraksha was granted facilities consisting of cash credit, term loan, and bank guarantee totaling 14.69 lakh, repayment of which was secured by various assets.

Zamaria Bank also relied on the 'statement of accounts' to back up its claim for the sum in question. Because the petition was accepted by the NCLT, the aggrieved party filed an appeal with the National Company Law Appellant Tribunal (NCLAT). You must decide whether or not the appeal can be accepted in favour of the aggrieved party.

(*6 marks*)

(*b*) The Competition Commission of India (CCI) has launched a probe into the alleged arbitrary procurement of Romania brands by Parikh Agricultural Produce Marketing Board (PAPMB) and Mojhi Agricultural Produce Marketing Board (MAPMB), in violation of the Act's Section 4 requirements. The Director General (DG) stated that PAPMB, as the sole procurer of A+ category wheat in Madhya Pradesh, with a 100 percent market share and indisputable supremacy, had purposefully neglected the importance of diverse wheat brands.

The DG found PAPMB in violation of Section 4(2)(c) of the legislation, as well as Section 4(2)(b)(i) of the act. MAPMB, on the other hand, was not found to be in violation. After a thorough deliberation, the CCI issued a show cause notice to PAPMB and MAPMB on August 30, 2018, asking them to explain why their actions should not be regarded to be in violation of section 4 of the act. An appeal was filed with the National Company Law Appellant Tribunal by a party who felt aggrieved by the same (NCLAT).

You must demonstrate whether or not the appeal before the NCLAT is maintainable under Sections 53A and 53B.

(*6 marks*)

4. (*a*) A wary purchaser of a secured asset is caught in the litigious cross fire between the borrowers and the banker. Spent his money, burnt his fingers (as he claims), and now wants to salvage the situation. The purchaser wants to withdraw from the sale and get his money back. But he faces uncertainty. After suffering an adverse order before the DRT, the Bank has filed an appeal before the DRAT, Chennai. And its disposal assumes importance for the purchaser to press his claim for refund. He wants the Appellate Tribunal to dispose of the appeal early. Now the question is, can this Court, in Kerala, assume supervisory jurisdiction over the Appellate Tribunal in Chennai, Tamil Nadu ?

A question of territorial jurisdiction must be resolved.

(*6 marks*)

(*b*) Rajula Ltd. and Drink Ltd. have reached an agreement for the building of a soft drink bottling factory. Drink Ltd. was supposed to supply the concentrates for making soft drinks. According to the deal between Rajula Ltd. and Drink Ltd., the soft drink would be sold in seven districts across Gujarat.

The Drink Ltd. cancelled Rajula Ltd.'s agreement. Commercial manufacturing at the plant ended in 2010, and Rajula Ltd. filed a lawsuit. After subtracting ₹ 18.10 lakh payable by the Rajula Ltd. to the Drink Ltd. as consultant expenses, the learned Single Judge ruled the Suit, awarding damages for loss of projected earnings and plant installation costs. Drink Ltd. was ordered to pay Rajula Ltd. an amount of ₹ 8.48 crore plus 10% interest from the date of the suit until payment. The Division Branch reversed the decree and dismissed the case on appeal. As a result, an appeal to the Supreme Court has been filed.

You are required to comment whether the Rajula Ltd., is entitled for damages for loss of anticipated profit ?

(*6 marks*)

5. (*a*) 'Dakshinarayan' was a Surat restaurant with rented premises. It was well-known, with award-winning chefs and attractively decorated premises. Executive lunches and dinners accounted for a large portion of the company's revenue. Dakshinarayan suffered economic losses after the opening of 'Trusty,' another outstanding restaurant in the area, and the business eventually went bankrupt.

Attempts to decrease the rent or sell the firm were both fruitless. Suppliers of food, beverages and utilities were owed ₹ 67,50,000 in outstanding supplies from the previous 45-60 days. There were 50,000 in rental arrears owed to landlord Rajashekar for one month. Rajashekar was given three months' advance rent, with one month's rent as security and one month's rent as advance.

'Saran Bank' was another secured creditor for Dakshinarayan. Because the accounts were kept up to date, the bank indicated that it did not want to appoint a receiver or file for insolvency. Kakubhai ran Dakshinarayan as a private proprietorship. He had a ten-person team, which included a chef, an assistant chef, six waiters, and two housekeepers. These employees' incomes have been cut in half for the past three months.

In this circumstance, who has the authority to start the insolvency process ? Justify your actions.

(*6 marks*)

(*b*) Since the last ten years, Satya Ltd. has been misreporting its financial accounting accounts, which have been duly audited by the Practicing Chartered Accountants (PCA) Partnership business. Satya had no choice but to declare the firm bankrupt when the company's financial situation deteriorated to the point that it was unable to pay any current liabilities as well. During the discussion and under pressure from stakeholders, Satya Ltd. published a press release claiming that there is a discrepancy between actual and reported earnings over the last decade due to accounting irregularities.

During the course of the forensic audit, it was discovered that the auditing firm's independence had been compromised by a huge audit fee and hefty consultant income. Because Satya was such a significant client for PCA, it had intentionally signed off on incorrect statements to protect the company's management. The examination also discovered a number of serious internal control flaws, including a lack of effective management oversight of the external reporting process and a disregard for applicable accounting standards.

Can the provision of auditor rotation be used to circumvent such situations ? Examine the situation critically.

(*6 marks*)

6. Babul Sharma, a partner of the Partnership firm, M/s. Jivatma Corporation, had been agreed upon and submitted his immovable property title deed, i.e., his house, to the Manjushri Banker, to support the firm to availl the loans from the Manjushri Banker. The said mortgage deed happened in 23rd April, 2017. Later on, as on 12th December, 2019; he retired from the firm, on account of his ill health. As on 22nd December, 2020; Jivatma Corporation seeks mandamnus to Manjushri Banker to release the mortgage title deeds of the property of the Babul Sharma, and to discharge the Babul from the guarantee furnished by the Babul, for repayment of the dues of the M/s. Jivatma Corporation to the Manjushri.

In this regard, it’s worth noting that, prior to filing the current petition, the Babul had filed a suit against the other Jivatma partners, claiming specific performance of the agreement contained in the deed of reconstitution of partnership to have the Babul’s security furnished, in which the Manjushri Bank is also a party.

You are required to make a decision based on legal considerations as to whether the guarantee should be released by Manjushri Bank or not ?

(*12 marks*)