

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 12

NOTE : Answer ALL Questions.

1. (a) Federal Zinc Ltd., is a listed entity. It accepted deposits from public. The amount of deposits as on 31st March, 2022 stood at ₹ 15 crore by 1500 depositors. Some of the deposits amounting to ₹ 5 crore belonging to 125 depositors matured in the month of June 2022. However, the company did not pay the amount to the depositors due to liquidity issues. The company issued letters to all such depositors requesting them to wait for some time and also assured them to pay the overdue interest on the matured amount. However, even after lapse of the 6 months from the due date, the company did not repay the due amount to the depositors. What recourse is available to the depositors ? Refer to relevant provisions of the law.

(5 marks)

- (b) XYZ Ltd. proposed to enter into a transaction with PQR Private Ltd. for the purchase of 40,000 sq. ft. of residential space. This proposal was treated as related party transaction and was required to be approved by the shareholders of the company. Accordingly, a special resolution was approved by XYZ Ltd. In terms of section 188 of the Companies Act, 2013, the related parties abstained from voting on this special resolution. Thereafter, an Extra-Ordinary General Meeting was convened for rescinding the resolution in which the related parties also voted. One of the shareholders made complaint to SEBI in this regard. SEBI took up the matter on the complaint made to it and issued notice alleging violation of Regulation 23 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

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The Adjudicating Officer proceeded to penalise XYZ Ltd. with a cumulative sum of ₹ 35 lakh for the alleged violation of the said Regulation 23.

Critically analyse and explain :

(i) Was there any violation in the above matter ?

(ii) Was the action of SEBI justified ?

Give reasons in support of your answer and refer to decided case law, if any.

(3+2=5 marks)

- (c) An authorized officer under Foreign Exchange Management Act, 1999 had reason to believe that Amar held foreign exchange and immovable property outside India in contravention of certain provisions of the Act. The authorized officer seized the movable and immovable properties of Amar located in India based on this belief. Amar raised objections on the action initiated by the authorized officer on the ground that the action of the officer was violative of individual rights and was also without any basis. Quoting relevant provisions, explain whether the action of the authorized officer is tenable under the said Act.

(5 marks)

- (d) A Company failed to pay fine levied for certain non-compliances. The prescribed authority issued non-bailable warrant of arrest as well as a distress warrant against the Managing Director for non-payment of the fine. The Managing Director contended that warrant cannot be issued against him as the liability is only of the company to pay. Citing relevant case law, briefly describe whether legal dues of a company can be realised from the Managing Director of the company and whether issuance of non-bailable warrant or distress warrant against the Managing Director is permissible ?

(5 marks)

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

2. (a) Jay Capitals Ltd. is a non-banking finance company (NBFC), incorporated under the Companies Act, 2013 and has got the license to operate as NBFC from the Reserve Bank of India (RBI). Prachi, who belongs to the promoter group, was the Managing Director of the said NBFC. On account of certain irregularities, the Reserve Bank of India debarred Prachi from occupying any position in the NBFC. But every agenda papers placed before the Board of Directors were being first perused by Prachi unauthorisedly and the Board thereafter, approved or dis-approved the agenda, on her verbal instructions.

In the light of the above facts, what is the status of Prachi in the NBFC ? Can she be held liable for her acts ? Give reasons in support of your answer.

(4 marks)

- (b) A, an aggrieved person by an order of the Appellate Tribunal under the Prevention of Money Laundering Act, 2002 intends to prefer an appeal before the city civil court of Madurai as he is a resident of Madurai. Can he do so ? If not, what is the alternative course of action for him ?

(4 marks)

- (c) During the course of proceedings before the National Company Law Tribunal (NCLT), it was observed that the Memorandum of Association and Articles of Association (MoA and AoA) are inconsistent with the provisions of the Companies Act, 2013. The NCLT advised the company to alter the relevant clauses of MoA and AoA to comply with the provisions of the Companies Act, 2013.

In the light of the above facts, explain whether there is any difference between the 'Alteration made by the company itself' and the 'Alteration advised by the NCLT' referring to the relevant provision of the Companies Act, 2013.

(4 marks)

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(d) Discuss :

- (i) Whether non-holding of the meetings of the Board of Directors would amount to oppression of minority shareholders ?
- (ii) Whether non-declaration of dividend can be termed as an oppressive conduct ?

(2+2=4 marks)

OR (Alternate question to Q. No. 2)

- 2A.** (i) Comfort Hosiery Ltd. is a listed entity engaged in the business of manufacturing and selling of innerwear for all the age group of people. The company has paid-up equity capital of Rs. 25 crore. In the year 2016, the company issued 10% Redeemable Preference Shares to the tune of Rs. 5 crore. The dividend at the rate of 10% was payable on the preference shares, but due to insufficiency of profits, the company did not pay dividends for the Financial Years 2018-19, 2019-20 and 2020-21. For the Financial Year ended on 31st March, 2022, the General Meeting of the shareholders was called on 5th August, 2022.

The notices for the General Meeting was issued to equity shareholders as well as to the preference shareholders.

During the course of the meeting, the preference shareholders averred that they were also entitled to vote on every resolution placed before the shareholders.

The Chairman of the Meeting informed the shareholders that only the equity shareholders can vote on every resolution placed in the meeting and the preference shareholders are not entitled to vote.

Is the Chairman's contention correct ? Refer to relevant provisions of the Company Act, 2013.

(4 marks)

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(ii) In order to promote private sector in defense, the Govt. of India have granted license to manufacture automatic light weight machine guns to Unique Guns Ltd. (UGL). UGL is a non-government public sector company and a listed entity. The company has entered into an agreement with the Govt. of India to manufacture and supply the machine guns for an initial period of 5 years, subject to the condition that the company shall not supply the machine guns to any unauthorized persons and the number of items manufactured, month wise, shall be furnished to the Govt. of India.

Harish, one of the employees, who is also a shareholder of the company (purchased shares in open market) came to know that company is secretly supplying the machine guns to some unscrupulous persons, who are supplying the machine guns to the terrorists which is against the public interest.

Can Harish make a complaint to the National Company Law Tribunal (NCLT) ?

Can Govt. of India make a complaint to the NCLT if such malpractices come to its notice ?

(4 marks)

(iii) Vara was appointed as Company Secretary and Compliance Officer in Aaradhya Textiles Ltd. (ATL). As per the terms of offer, she was provided with a rent free furnished accommodation of 3BHK flat in Borivali (East), Mumbai for her use exclusively, with a condition to surrender the flat to the company within a month after the cessation of service.

Since Vara was unmarried, she kept her friend Anushka, as paying guest in the company provided flat for which Vara charged ₹ 15,000 per month from Anushka.

The company came to know that Vara has kept her friend as paying guest and is also charging rent, which was not meant for subletting. The company issued a

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show cause notice to Vara, which she did not reply and also remained absent from the company. The company terminated her service and served a legal notice to hand over the possession of the flat. However, Vara did not vacate the flat and alleged wrongful dismissal from service.

In light of the above facts, whether the company can move an application before the National Company Law Tribunal against Vara for wrongful withholding of a property of the company ? Also refer to relevant provisions of the Companies Act, 2013.

(4 marks)

- (iv) Ekta Textiles Ltd. issued a prospectus for its initial public offer (IPO). The prospectus contained some misleading information which may mislead the investors in subscribing to the issue. Some of the investors came to know about this information after they had subscribed and were allotted the shares. What recourse is available to the affected persons, who subscribed in the IPO on the basis of such information and were allotted the shares ?

(4 marks)

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

3. (a) Discuss the liability of executive and non-executive directors for fraud committed by the Managing Director of the company which came to their notice during a Board Meeting.

(4 marks)

- (b) Sunidhi, ACS, was appointed as Asst. Vice President (Board Secretariat). Just after joining, she came to know that the Central Government has appointed an inspector to carry out detailed investigation into the alleged fraud in the company. In order to carry out the smooth operations of inspection, what preparation would you suggest to Sunidhi ?

(4 marks)

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(c) Richa was appointed as a senior level officer in a company. Before joining the company, she did not do any due diligence. The company was under investigation by the Serious Fraud Investigation Office (SFIO). One day, the SFIO official arrested some of the directors and employees of the company for the offences covered under 447 of the Companies Act, 2013 and Richa was one of them. She applied for bail through her Advocate. The Advocate made the bail application before the district court. Examine whether Richa will get bail ? Refer to relevant provisions of the law.

(4 marks)

(d) What are the penalties/punishments for the following ?

(i) Penalty for insider trading under Section 15G of SEBI Act, 1992.

(ii) Penalty for contravention under the Securities Contracts (Regulation) Act, 1956 where no separate penalty has been provided.

(iii) Punishment for repeated default under Companies Act, 2013.

(iv) Penalty for contravention of any provisions of Foreign Exchange Management Act, 1999.

(4 marks)

OR (Alternate question to Q. No. 3)

3A. Write notes on the following :

(i) Meaning of Interlocutory Application under NCLAT Rules, 2016.

(4 marks)

(ii) A practicing Company Secretary, who is in practice since 2010 with LL.B. degree intends to be empanelled as 'Mediator or Conciliator' under Companies (Mediation and Conciliation) Rules 2016. Can he be empanelled ? If not, why ?

(4 marks)

(iii) Crisis of Organizational Misdeeds.

(4 marks)

(iv) Punishment/penalty for :

- Cheating by personation
- Improper use of “Limited” or “Private Limited”
- Deceitfully personating as an owner of shares or interest in a company.
- Tampering with the minutes of the proceedings of meeting.

(4 marks)

4. (a) Shyam Electronics Ltd. is engaged in the business of manufacturing and distributing of colour TVs. Anil joined the company as Vice President (Accounts and Taxation). He observed that the company was taking benefit of Input Tax Credit (ITC) by creating some dummy firms in the names of promoter directors. There is no supply of raw materials, but the invoices are raised by these firms, payments are made and the company is availing of the ITC in its GST Returns and claiming big amount of refund. He made a complaint to the Tribunal under section 213(b)(i) of the Companies Act, 2013, alleging that the business of the company was being conducted in a fraudulent and unlawful manner and sought investigation to be made.

The Tribunal after satisfying with the application made by Anil, ordered that the affairs of the company ought to be investigated by an inspector appointed by the Central Government. During the course of the investigation, the Chief Executive Officer of the company terminated Anil on the ground of in-subordination and damaging the image of the company.

Comment on the action of the company in terminating Anil during the course of the investigation.

(4 marks)

(b) In the contemporary world of competitive business, there is a saying that 'no risk-no business'. Moreover, Environmental, Social and Governance (ESG) Risks represent a specific subject of general risks that a company must manage. How should a company handle such risks ?

(4 marks)

(c) A Corporate Insolvency Resolution Proceedings (CIRP) was initiated by the financial creditors and the National Company Law Tribunal (NCLT) passed the order of acceptance of proposal of the Resolution Applicant. After taking over the control and management of the Corporate Debtor, the Resolution Applicant observed an apparent mistake in the order. The proposal of the Resolution Applicant was to provide payment of ₹ 4,79,06,549 to all the Operational Creditors, whereas in the order it was wrongly written as ₹ 4,97,06,549.

The Resolution Applicant seeks your professional advice to get the inadvertent mistake rectified. Discuss the relevant provisions of the law and suggest the procedure for its rectification.

(4 marks)

(d) In a tender floated by ABC Bank for the supply and installation of new signages/ replacement of existing signages for branches/offices/ATMs of ABC Bank located at specified metro centres of various circles of ABC Bank across India, it appeared that certain bidders of the tender were coordinating and fixing the prices of their services as well as allocating the market amongst themselves to distort fair bidding process. Citing relevant case, examine whether the acts of the tenderers are violative of any provisions of the law.

(4 marks)

5. (a) Anurag was appointed as Independent Director in a listed entity, which is in the list of top 1000 listed entities by market capitalization as on 31st March, 2022. Regulation 25(10) of SEBI (LODR) Regulations, 2015 provides that with effect from 1st January, 2022, the top 1000 listed entities by market capitalization calculated as on March 31 of the preceding financial year, shall undertake Directors and Officers insurance (D&O Policy) for all their independent directors of such quantum and for such risks as may be determined by its Board of Directors.

The company is planning to purchase D&O Policy for all its directors and key managerial personnel. Discuss :

- (i) The coverage of the D&O Policy.
 - (ii) Key points Anurag, as a director, should ensure in the D&O Policy.
- (b) The Consumer Protection Act, 2019 has taken away the power to initiate class actions from individuals and vested them into the hands of the regulator. Do you agree with this statement ? Comment.
- (c) An investor proposes to make a complaint about certain groups of individuals who engage in the trading of securities by adopting manipulative practices. The investor does not know to which authority he can make the complaint and under which provisions of the law. Prepare a detailed note for the investor explaining under which law the complaint be made, to which authority and under what circumstances can the complaint be made and type of actions that may be taken by the authority.
- (d) Write a note on the Exit Checks and Clawbacks.

(4 marks each)

6. (a) Nikki joined a retail store run by Jain Daily Needs Ltd. as Manager. After some time she manipulated the accounts of the branch and thus made illegal money amounting to Rs. 15 lakh. The fraud was unearthed during the regular inspection of accounts and stock check. The Area Manager complained to the Corporate Office of the company and Nikki was put under suspension by the competent authority.
- What penal action can be taken against Nikki under the provisions of the Companies Act, 2013 ? What would be your answer, if the fraud amount is Rs. 5 lakh only ?
- (4 marks)*
- (b) Nothing in the Code of Civil Procedure, 1908 shall be deemed to limit or otherwise affect the inherent power of the Civil Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Discuss the inherent powers of the Court and refer to decided case law, if any.
- (4 marks)*
- (c) Siddhant is a Practicing Company Secretary and Insolvency Professional. He provides to his clients various consultancy services. In order to secure his office establishment, he purchased a general liability insurance policy from an insurance company. By going through the policy terms and conditions, he realized that it will not cover his professional liability. Which policy should Siddhant take in order to mitigate his professional liability ?
- (4 marks)*

- (d) Kamal is a farmer. He grows vegetables and fruits on his farm. However, he secretly does trading in opium and unauthorisedly sells it to some unscrupulous persons. The keeping and selling of opium and poppy straw is a punishable offence under the Narcotic Drugs and Psychotropic Substances Act, 1985. From this illegal trading, he made money and purchased a big house in the village. Some villagers were keeping an eye over the activities of Kamal and when Kamal was storing the opium substances in his house, they informed the matter to the appropriate authority. The authority searched the premises, seized the opium substances and registered a case under the Prevention of Money Laundering Act, 2002 (PMLA). In light of the above facts, who is authorized under the PMLA to make search and seize the goods ? Also refer to the relevant provisions of the PMLA.

(4 marks)

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