

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 15

NOTE : Answer ALL Questions.

1. (a) Arjun, purchased an open land for ₹ 6 crore on July 15, 2020, through registered sale deed from Alpha Enterprises Ltd, seller of the property. Subsequently, development happened on that land at fast pace and buildings were also constructed and many units were sold to new purchasers. Out of constructed 302 units, third party interest was created for 61 units and it was transferred to the purchasers. No objection certificate for another 14 purchasers was received by the private bank. Rupan, claiming to be one of the shareholder of the Alpha Enterprises Ltd filed an application under Section 241, 242 of the Companies Act, 2013, before NCLT on allegation of oppression and mismanagement in Alpha Enterprises Ltd. NCLT upon considering the application, issued interim order on Arjun “to maintain status quo relating to remaining 227 units by not creating any third party interest and not to carry on work construction beyond 302 units till disposal of case.”

Aggrieved by the interim order, Arjun filed an appeal against the order, pleading that being purchaser of the land in question, he was not related in any manner to Rupan

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and by the impugned order, he has been restrained from proceeding further with transferring/executing sale deed in respect of remaining constructed units, which has been constructed much after purchase of the land.

In the light of judicial pronouncement, comment whether Arjun's appeal would be allowed.

(5 marks)

- (b) Gulababad Industries Association (GIA) is a society registered under the Societies Registration Act 1860, with members primarily involved in a variety of industries including steel, alloys, medical devices etc. Amar Gas Ltd. (AGL) is a company engaged in the business of setting up of distribution network in various cities for supplying natural gas to industrial, commercial and domestic customers. It would purchase natural gas from GAIL (Gas Authority of India Ltd) and supply them in the Gulababad market. GIA alleged that the terms of Gas Supply Agreement (GSA) are biased and one-sided, without any scope, who were solely dependent on Amar Gas for the supply of natural gas. The case came up before the Competition Commission of India (CCI) based on the information filled by the GIA, alleging contravention of Section 4 of the Competition Act, 2002. GIA is an association of industries, whose members consume natural gas supplied by AGL. The primary allegations against AGL were that it was abusing its dominance in the relevant market of 'supply and distribution of natural gas in Gulababad' by incorporating unconscionable and one-sided terms in the Gas Supply Agreement (GSA).

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Finding a prima facie case, the CCI directed the Director General (DG) to investigate the matter. The DG Report concluded that various clauses of the GSA hinted towards abuse of dominance by AGL. This was challenged by AGL before NCLAT.

In the light of judicial pronouncement, comment whether the appeal will be allowed.

(5 marks)

- (c) PQR Chits and Finance Ltd issued cheques to 150 depositors, while refunding their matured deposits with interest. All the cheques issued by the Company were dishonoured by the bankers of the Company, as those cheques are not issued by the bank to the Company for use. Around 20 of these depositors, made written complaint to the local police against the Company, seeking action. They also approached the Company, informing about their complaint to the police for dishonour of the cheques. The Company contended that the state police has no role to play in such matters, as it is a company law matter. Under such scenario, what is the remedy available to these depositors ?

(5 marks)

- (d) Soman, had completed MBA in Finance and worked with a multinational company in its Treasury department. He was intrigued by the forex operations and wanted to pursue a career in that forex and treasury management. After two years, he joined Fundex, a money changer firm with branches in all major cities in India. Having good experience and contacts, he wanted to start off something on his own and started

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a business as money changer firm, dealing in foreign currencies by acquiring, exchanging them on need basis, converting the foreign currency into Indian rupees. He handled all his operations, through physical exchange of currency, without getting involved in any banking transaction through his known sources. He did not maintain any records for his transactions and was sure that they would not be known to any regulatory agency. However, he was arrested and prosecuted by an Assistant Director of Enforcement Directorate, as all his transactions amounted to contravention of FEMA. Despite various searches and inquiries, the quantum of amount involved in his dealings could not be ascertained as he had not maintained proper records. Under these circumstances, explain how the Adjudicating Authority can proceed in this matter.

(5 marks)

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

2. (a) Raghupathy (Petitioner) filed a complaint against Roshesh and Raj (accused) alleging that both of them induced him to become consignment agent of their Company, for supply of medicines in south Kerala region. On their inducement, Raghupathy deposited a sum of ₹ 15 Lakh as security deposit, for which he was promised an interest of 18% per annum by Roshesh. He further promised to pay 5% commission on total sale in south Kerala region and else agreed to give commission on indirect sale made by him. An agreement was executed, wherein he was appointed as a consignee

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agent of the Company for south Kerala, for a period of five years. Thereafter, there was regular supply of stocks for next one year but after one year, they dishonestly stopped supplying medicines, though Roshesh sold medicines worth about ₹ 40 lakh in south Kerala region through Raj, in violation of the agreement. This caused Raghupathy a loss of ₹ 5 Lakh on account of illegal retention of the commission and security money. Roshesh did not give interest on the security deposit. Raghupathy also alleged that Roshesh and Raj, had dishonest and fraudulent intention to deceive him by cheating; and that had they not made false representation, he would not have given money to them. In background of judicial pronouncement, comment whether criminal prosecution can be raised against Roshesh and Raj.

(4 marks)

- (b) An offence under Companies Act, 2013 was compounded by RST Ltd and compounding order was issued by the compounding authority specially for offences by the Company and the Directors of the Company as officer in default. Company has paid the compounding fee. After the payment, compounding authority came across certain facts about the offence. If those facts had surfaced at the time of deciding compounding fee, compounding authority would have levied higher fee. Since suppression of fact was higher, compounding authority re-opened the matter and revised the compounding fee and asked Company to pay the differential. Evaluate tenability of action of the compounding authority, in the light of the judicial pronouncement.

(4 marks)

- (c) The Board of Directors of Gama Ltd, a listed company appointed Reyon, as an Executive Director at the Board meeting held on June 1, 2023. The Company took up this appointment of Reyon, for approval of the shareholders at its Annual General Meeting (AGM) held on September 29, 2023, but the same was not approved by the shareholders. However, he was appointed as an additional director on whole time employment by the Board at its meeting held on September 30, 2023 by passing a resolution to hold the office of directorship till the conclusion of the next AGM, to be held for the year 2024.

Is appointment of Reyon as an additional director, by the Board justified ?

(4 marks)

- (d) Kabir, aged 17 years, has been arrested for laundering a sum of ₹ 51 Lakh as, it is a cognizable and non-bailable offence punishable, with a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. He proceeded for bail before the Court, stating that he is a minor and bail can be granted. State whether he would succeed.

(4 marks)

OR (Alternate question to Q. No. 2)

- 2A. (i) The Central Government ordered investigation of the ownership of Pious Ltd and sent notice to the Company and its directors. Against this, the Managing Director, on behalf of the Company replied that, the order of investigation was not made based on a court or Tribunal order and hence it is not valid. Is the contention of the Managing Director correct ?

(4 marks)

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- (ii) Gupta Traders Private Ltd. had 5 shareholders, who were brothers holding 2500 shares each. Total share capital of the Company is 12500 of ₹ 10 each. Their names were AK Gupta, BK Gupta, CK Gupta, DK Gupta and HK Gupta. Articles of the Company provided that they shall be permanent directors and will not be liable to retire by rotation. After 3 years, RK Gupta, son of AK Gupta was inducted into the company. Except BK Gupta, all 4 brothers parted with 500 shares each in favor of RK Gupta. RK Gupta thereby became, along with his father and uncles, holder of 2000 shares. BK Gupta continued to hold 2500 shares. After one year, CK Gupta died and by this time dispute amongst the brothers had gathered full momentum. BK Gupta filed a petition against AK Gupta and RK Gupta that control of the Company has been assumed by both of AK Gupta and RK Gupta and Company's affairs are being mismanaged and are being conducted in a manner which is prejudicial to the company's interests. He also alleged that company is not maintaining statutory books at registered office and there is no maintenance of asset register or records in the Company. Company is not holding board meetings thereby suppressing minority shareholders' rights. In light of judicial pronouncement, comment whether BK Gupta's arguments are tenable.

(4 marks)

(iii) OCPM Ltd has been compounded by RBI's order for the offences committed by the Company under FEMA on January 31, 2022. The Company has preferred an appeal against this order on March 1, 2022. The Company has again committed a similar contravention on March 2, 2022. Can RBI initiate compounding process for this subsequent violation separately ?

(4 marks)

(iv) Pragya, Aarav and Aryan, a GST inspector, Railway officer and Customs officer (Joint Commissioner) respectively in the implementation of GST laws, seized goods from godown of Nitin, a trader, after following all the protocols as defined under GST laws and regulations. Godown was raided and goods were seized on April 1, 2022. After effecting seizure, they did not issue any notice to this effect to Nitin till December 31, 2022. Nitin filed a complaint against the occurrence of the event (including raid and seizure) stating that personnel involved in the raid were officers from Railways and Customs and have no authority to seize goods and hence the raid was *prima facie* illegal and the goods must be returned immediately. Is Nitin's contention valid ?

(4 marks)

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

3. (a) 'Complainant has no legal or vested right to withdraw a complaint as and when he wishes.' Elucidate.
- (b) 'Preference shareholders can make an application to Tribunal for relief in case of oppression and mismanagement, but not debentureholders'. Comment.
- (c) 'Certain regulatory powers of RBI have been changed and are not applicable to International Financial Services Centres.' Explain.
- (d) 'Risk management and Crisis management are separate'. Elaborate.

(4 marks each)

OR (Alternate question to Q. No. 3)

3A. Write short notes on :

- (i) Importance of appeal
- (ii) Professional indemnity insurance and its exclusions
- (iii) Protection of employees under Section 218 of Companies Act, 2013
- (iv) Summons case and warrants case

(4 marks each)

4. (a) State whether the following offences under the Companies Act, 2013 are compoundable. If yes, also mention the compounding authority :

- (i) Failure to maintain proper books of account
- (ii) Contravention of section 144 by the auditors
- (iii) Company secretary in practice certifies the annual return otherwise than in conformity with the requirements of Section 92
- (iv) Political contributions in contravention of Section 182.

(4 marks)

(b) Amit is accused for certain offences under SEBI Act, 1992. Accordingly, SEBI ordered him to follow certain direction for the refund of money he made due to his illegal actions in the stock market and imposed penalty for the same. Amit was neither able to refund the money nor able to pay penalty imposed. He has declared to SEBI that after the investigation, he has stopped doing any business and has totally cut off from the stock market. He no more deals in trading of securities. Can SEBI recover the amount from Amit ? Explain.

(4 marks)

(c) Mr. Faron, a declared smuggler in pursuance of an order of detention, has absconded while he was taken into custody. Despite many efforts, he could not be traced by the police and the same has been reported to the Government. Under the situation, explain the further course of action available in this case.

(4 marks)

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- (d) The Board of Myriad Ltd had taken loans from its Directors and their relatives, thereby contravening the provisions of Section 186 of the Companies Act, 2013. Further it was also found that the directors had diverted these funds for their personal investment in share market. However, the directors had lost all the money they invested and the amount was now not recoverable. Explain the penal provisions that can be enforced against the Directors for such acts.

(4 marks)

5. (a) WellBeing Health Group, is a conglomerate which provided various services relating to health, well-being and other medical facilities including specialized hospital care and other medical amenities. Sudaam, a Practising Company Secretary, was approached to provide professional services relating to Company law and other law compliances for the group. He was approached with the following queries :
- (i) Hrudaya Private Ltd, was incorporated on September 30, 2020, to provide specialized medical facilities relating to heart related issues. The following are the details extracted from the audited financial statements of the Company :

₹ Crore

Particulars	As at March 31, 2021	As at March 31, 2022
Paid up share capital	5.00	14.00
Reserves & surplus	2.50	6.20
Turnover	78.20	180.30
Profit before tax	8.10	18.50
Profit after tax	5.90	11.60

The Company has not constituted Corporate Social Responsibility (CSR) Committee, though it has CSR policy in place.

- (ii) Vyoma Ltd, is another group company which is a manufacturer of medical and surgical instruments. It is covered under CSR applicability, and has been spending towards ongoing projects covered under its CSR policy, giving preference to its local areas around its factories' locations. However, the Company has not spent any amount towards the ongoing projects due to various reasons during the financial year ended March 31, 2023.

In the background of above facts, prepare a brief note explaining compliance with the requirements for Hrudaya Private Ltd and Vyoma Ltd. Also indicate, if there has been any non-compliance with the provisions of Companies Act, 2013.

(8 marks)

- (b) Prekshak Ltd, was a known name in media and news broadcast business. Over last two years, the business was severely impacted, due to heavy competition and the management was evaluating various cost cutting measures to navigate the dwindling profit position. The CFO was given the task, to thoroughly scrutinize all the costs of the Company and identify avenues for cost reduction. After a detailed review, the CFO made a presentation to the Board, indicating various costs including the insurance costs which the Company was bearing. He indicated that the Company was paying huge insurance premiums including premium for director & office insurance (D & O) policy. He suggested the Board members to revisit the requirement for D & O policy and evaluate if the policy can be surrendered. The Board of Directors ask the Company Secretary for his inputs.

Prepare a brief note outlining the requirement for D & O Policy and the principles which the directors are expected to follow in this regard.

(8 marks)

6. (a) Rasik joined as Company Secretary of Jeetu Jewelers Ltd effective April 1, 2023. Prior to him, Keyur was the Company Secretary of the Company for a period of two years till December 31, 2022. The Registrar of Companies (RoC) sought certain clarifications on the documents filed by the Company for the financial years ended March 31, 2021 and March 31, 2022 by issuing notice dated June 1, 2023 to the Company. The management of the Company asked Rasik to respond to the Notice appropriately. However, Rasik contended that, as he is in the employment of the Company since April 1, 2023, he would not be in a position to respond to queries relating to earlier periods. Can the Company ask Keyur, to provide the information ?

(4 marks)

- (b) Shareholder activism is strengthened due to recent changes in corporate laws including the Company Act, 2013. These laws empowered the minority shareholders, which in turn, have protected them and empowered them to present their viewpoints to the Board of Directors and more actively protect their interest. Highlight the factors that have played pivotal role in fostering shareholder activism in India.

(4 marks)

- (c) Roy, proprietor of Roy & Co., approached Fast Rider Private Ltd, a transport carrier to deliver cotton bales from Mumbai to Delhi. The truck driver of the Company misappropriated the goods during transportation and also stated that the bales were lost, during travel and he has no clue how they got misplaced. Roy filed a suit against the Company, citing criminal misappropriation of property. The Company contended that it did not make any gain in this matter and breach of trust is to be considered as a civil wrong and would not constitute a criminal offence. Is the contention of the Company justified ?

(4 marks)

- (d) On the basis of a complaint lodged with the Police Station, Burra Bazar (Kolkata) an investigation was conducted by the police and the charge-sheet was filed before the Metropolitan Magistrate, Kolkata, against appellants and some other persons for offences under Sections 454, 380 and 120B of the Indian Penal Code, The Magistrate issued process to the accused and after hearing them a charge was framed against them for the said offences. The Metropolitan Magistrate who framed the charge opted to write a short order presumably for dismissing the petition filed by the appellants for discharging them. On appeal against the order, a learned Single Judge of the High Court sets aside the aforesaid order stating that it is clear from the order of

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the Magistrate that he had not taken into consideration the charge-sheet and the other papers submitted therewith for satisfying himself as to whether there is a prima facie case against the accused persons. He further directs him that if he decides to frame charge upon such satisfaction based on perusal of the charge-sheet and other papers submitted therewith, the learned Magistrate must record the fact of such perusal and his satisfaction, only then he shall proceed to frame the charge. In the light of judicial pronouncement, comment whether detailed written orders are required at every stage of trial or not specially, in case of framing of charges.

(4 marks)

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