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Roll No. .... **OPEN BOOK EXAMINATION**

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

Total number of questions : 6 ***Total number of printed pages : 16***

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

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

Gaba Group was founded by J. N. Gaba in 1870s. He successfully set up cotton manufacturing mills at Nagpur and Bombay. He was also the first businessman, to introduce hydroelectric power plants in India, which later on became part of Gaba Power.

In 1901, his vision gave India its first large scale iron works — Gaba Iron and Steel Company. The Gabas were equally involved in service industries such as hotels, telecommunications, broadband and financial services. In 1998, Gaba Motors launched the first fully indigenous India Passenger Car and in 2008, it launched Gaba Mano, the world's cheapest car. Gaba Consultancy Services (GCS) was founded by J.N. Gaba in 1968. It is one of the largest IT service providers in the world. GCS, with a market capitalization of more than ₹ 5,000 billion almost contributes to 60% of Gaba Group's total market value.

Gaba Sons, as the promoter of the major operating Gaba companies, owns significant shareholdings in these companies. Gaba companies together are commonly referred to as Gaba Group. The Chairperson of Gaba Sons is the *de facto* Chairperson of the Gaba companies. The companies are further networked through cross holdings, directors and even trustees. About 66% of the equity capital of Gaba Sons is held by philanthropic trusts endowed by members of the Gaba family. The income of Gaba Sons is primarily dividends and brand royalties received from the Gaba Group companies. The Gaba Group is reputed to be an ethical organisation with highest standards of corporate governance.

Sreno Mozak, a civil engineer and management graduate from London Business School with experience of managing a big conglomerate, was chosen as Nutan Gaba's successor in November 2011. On Nutan Gaba's retirement in December 2012, Sreno Mozak was appointed as the sixth chairperson of Gaba Sons to head the Gaba Group. He was selected by a panel comprising *inter alia* Nutan Gaba and Kumar S (a close friend of Nutan Gaba). Mozak was the grandson of S.P. Mozak, whose family holds 18.4% equity in Gaba Sons.

Traditionally, once appointed, a Chairperson would remain at the helm of affairs until retirement. J.N. Gaba was chairperson for more than 50 years and Nutan Gaba for 20 plus years, until his retirement at the age of 75 years. Mozak, who was 48 years old, should have continued for a long time. However, in a departure from traditional practice, he was removed on October 21, 2016. Mozak was neither served any show cause notice for removal, nor was given a chance to defend himself. No reasons were provided at that time by Gaba Sons for his sudden removal. The decision was taken as per the collective wisdom of Gaba Sons and on the recommendation of key shareholders.

Before Mozak, every Chairperson of Gaba Group was a member of Gaba family. As the head of the two Gaba Trusts, Nutan Gaba controlled 66% of Gaba Sons and hence wielded significant control as the promoter shareholder. Before Mozak was made chairperson, the post of head of Trusts and the Chairperson of Gaba Sons, was always held by the same person.

The Gaba Group maintained that Mozak was asked to step down, at least on four occasions, but he insisted on a Board vote. Kumar S, in his praise of Mozak in September 2016, just a month before his removal had said that, Mozak is building firm foundations to ensure that Gaba's expansions lasts for not a quarter or two, but a decade and more.

The rift and mystery unfolded when, soon after taking charge as chairperson, Mozak replaced Nutan Gaba's selected CEO's of Gaba Hotels, Gaba Motors and Gaba Steel with younger persons of his choice. Perhaps, Mozak's bigger mistake was his wanting to get rid of Mano (operating at 15% capacity), which was the dream project of Nutan Gaba.

A new airline, under the brand name of Vimaan was launched in January 2015, along with Minto Airlines where the Gabas held a majority stake. Mozak was reluctant to pump more money into the aviation business.

Dissatisfaction with how Mozak handled the Kocomo negotiation with the Japanese party, business partners in the telecom business and the divestment in Korus, the UK based company, was the final nail in the coffin.

Mozak, in a letter to Gaba Sons Board, after his removal, commented :

"Prior to my appointment, I was assured that I would be given a free hand. The previous Chairman was to step back and be available for advice and guidance as and when needed. After my appointment, the Articles of Association were modified, changing the rules of engagement between the Trusts, the Board of Gaba Sons, the Chairman and the operating companies."

Mozak alleged that he was reduced to being a ‘lame duck chairman’, while Nutan Gaba remained a towering figure influencing decisions even during the board meetings, which forced him to circulate a corporate governance note in order to clarify the distinct roles of Gaba Sons, Gaba Sons Board and the Boards of operating companies.

Nutan Gaba argued that Mozak made it his personal fiefdom, took unilateral decisions and did not keep the Board appraised of major decisions, even though he had been specifically asked to do so, particularly for large scale capital investments and appointment and pay packages of senior management. There was a corporate Mahabharat and war of many battles.

The family run businesses have governance pitfalls. There are governance intricacies in large family run businesses struggling to balance the interest of the promoters with the interest of all the other stakeholders in the network of companies of the group. Family dynamics strongly influence the governance of family businesses and family feuds and can lead to splits in a company. Traditionally, family businesses have always been run by a member of the family. In the instant case, clearly, in Nutan Gaba’s mind, his legacy was slowly vanishing before his eyes.

One of the strengths of the Gaba companies is the use of brand name ‘Gaba’, but for using it, each company has to pay royalty to Gaba Sons. This is notwithstanding, that the brand has been built because of the older operating companies in the group.

The Gaba team had threatened withdrawing rights to use of brand name and loan guarantees, if Mozak remained at the helm. This would have been detrimental to the business of the companies. Group companies are dependent on the group for resources including financial, legal and technical know-how; and often shared common brands and infrastructure such as software platforms or business processing units, inter-company transactions are also prevalent.

All decisions in a family run business are taken with a view of long term benefits of the family. They are not only interested in tomorrow or even next year, but in the growth, success and survival for generations to come. Professional managers need to prove their performance through quarterly and annual results. Their appointments and remuneration are usually linked to performance. Thus, they tend to hold short-term view. The difference in strategy between Nutan Gaba and Sreno Mozak could stem from this. Nutan Gaba did not have to prove his mettle or justify his appointment in the short-run. Unclear roles and a split in power between the chief trustee, a family representative and the Chairperson and an outsider had proved detrimental.

Family managers tend to make decisions that balance the interest of the family and the company. Emotions and sentiments seep into the decision making process. Appointments to key managerial posts, are kept in the family or outdated ancestral factories are held on to because a great grandfather built them, or because they have been in the family for generations. Professional directors, as agents and trustees, are expected to protect the interests of all the shareholders. This can lead to family interests being hurt and thus the promoters being unhappy with the chosen non-family chairperson or chief executive officer. Business families such as Gabas or Tirkas start grooming their children from a young age in a manner that instils in them a business acumen enabling them to take charge of the business empire. Mozak was brought in just one year prior to Nutan Gaba's retirement. No long-term succession planning was put in place. As Nutan Gaba chose not to have a family, he should have mentored someone to become his successor, who would then share his values and management style.

Independent directors do not owe allegiance to major shareholders. Their fiduciary duty is to promote the interest of all shareholders. However, in a family controlled business, the whole purpose of independent directors is to protect the interest of the family (read minority). If, in their wisdom, they wanted to support Mozak, then so be it. But if the Gabas withdrew their support, the companies would suffer, and as a consequence, minority shareholders would see their investment value fall. The EGM notices of GCS and other Gaba companies expressed their Board’s support of the principle shareholder’s desire to remove Mozak as a director. Gaba Group Board (GGB) in its statement removing Mozak as chairperson, stated it was done keeping in view the long-term interest and alignment of all stakeholders and stability of the company.

The lack of active participation by institutional investors and small shareholders gives promoters’ unchallenged power. Almost half of institutional shareholders including IIC of India, the largest institutional investor in Gaba Companies and more than 80% of the public shareholders did not even vote in the EGM held by GCS to oust Mozak. Hardly anyone of them questioned about the reasons for his removal. Only one shareholder challenged the actions of the Gabas and the role of independent directors.

Generally, in family-run business, board processes are very loosely structured; deliberations and decision making processes can tend to take on an informal turn. The dominant member, generally the promoter, is able to control and steer discussions. The agenda of Gaba Sons did not include the removal or replacement of the Chairperson of the Board. Mozak was removed without show cause notice or a chance to defend himself. In fact, Gaba Sons allowing Nutan Gaba, post retirement, to participate in the board meeting was itself said to be questionable.

Also at GCS, Gaba Sons used their powers under the Articles of Association to remove Mozak without passing any board resolution. The Board processes at GGB were also questioned as they failed to provide the video recording of the meeting in which Mozak was removed. GGB later passed a circular resolution confirming the removal to prevent any legal action. If removing a Chairperson is unusual, doing it by circular resolution was unprecedented.

Usually, one or two people exercise full control in the family firms, the culture and values of the organisation depend on the ethical behaviour of these individuals. Unethical removal of Mozak, by Nutan Gaba and the refusal of Mozak to step down from the Gaba Group companies reflected their ethical standards. The blatant disregard and mutual mud-slinging left much to be desired in terms of behavioral standards benchmarks set by the captains of Indian industry.

The Gaba Trusts are registered as philanthropic entities, which entitles them to tax exemptions, raising questions of their direct involvement in corporate matters. The public feud caught attention of the income-tax authorities, which was reassessing the status of the Trusts. The whole episode impacted the 148 year old conglomerate's image in the eyes of the stakeholders and its reputation as a good corporate citizen. Gaba Trust's partnership with the Department of Science and Technology of India to fund social entrepreneurship was felt to be a move to rebuild its tarnished image.

The removal of Mozak was viewed in corporate circles and among the enlightened public as mystifying. When Mozak was removed, Nutan Gaba informed the Prime Minister and he even later on met up with the Finance Minister.

The governance framework between the three powerhouses — Gaba Trusts, Gaba Sons and the listed Gaba companies probably craved to be addressed to determine succession planning, as the boardroom battles witnessed in India's biggest conglomerate portrayed the weakness in governance systems of modern corporations.

The National Company Law Appellate Tribunal (NCLAT) in its December 2019 Order reinstated, Mozak as the executive Chairperson of the Gaba Group. The Order, while upholding Mozak's charges that he was ousted without due process, said the action taken by Nutan Gaba against the former Gaba Sons Chairperson was oppressive and illegal. It set aside the conversion of Gaba Sons into a Private Limited company. In March 2020, the Supreme Court stayed the NCLAT order until it reaches a decision. Unfortunately, Sreno Mozak died in a fatal car accident.

Questions :

(*a*) "Corporate governance processes are over-run in family run businesses by those in power for serving their self-interests". Comment.

(*10 marks*)

(*b*) Evaluate the role of family dynamics in choosing the leaders in family run business, in absence of a defined process. Also, suggest how succession planning can be done in such organisations.

(*10 marks*)

(*c*) Analyse the interest of Gaba group versus subsidiary companies in the context of conflict of interest between the two.

(*10 marks*)

(*d*) Discuss the role of independent directors, non-promoter shareholders in a family-run business, in context of corporate ethics.

(*10 marks*)

2. (*a*) Halo Private Ltd, had four shareholders, each holding, 25,000 equity shares of ₹ 10. These shareholders were also the directors on the Board. The Company was initially doing well operationally and financially. However, after four years of operations, differences arose between the directors managing the Company's business and the regulatory filings of the Company were impacted and not made within time. It was mutually agreed that the Company should be wound up. Accordingly, a voluntary application was filed as per the Companies Act, 2013 in January 2019 and the matter was pending before NCLT. However, one of the directors wanted to revive the Company and had filed an appeal under Section 252 of the Companies Act, 2013, for revival of the Company, which was pending adjudication before the NCLT. Meanwhile the Registrar of Companies (RoC) struck off the name of the Company from Register of Companies with effect from September 1, 2019.

In the background of judicial pronouncements, comment whether NCLT can proceed with the winding up petition ?

(*6 marks*)

(*b*) Auro Auto Ltd (AAL) is a leading global automobile manufacturer listed on a Bombay Stock Exchange (BSE). AAL has wide range of products including fancy cars and sports cars and has a market share of 12% in India. The Company heavily invests in research and technology and aims to bring higher sophistication in its products, while providing best in class experience to its customers. AAL is planning for expansion in India and overseas. It is also evaluating to invest in start-ups with great ideas and has also founded incubation centres which give impetus to budding entrepreneurs. During evaluation process, the Mergers and Acquisitions team has identified few entities namely, Drive Mauritius LLP, registered under the LLP Act of Mauritius, and Pluto LLP, an Indian LLP which have developed technology, that can help AAL.

After the initial evaluation, the M & A team, reached out to you, the Company Secretary of AAL, with the following questions :

(*i*) Can Pluto LLP be merged with AAL assuming that Pluto LLP is not registered as a Company ?

(*ii*) Can Drive Mauritius LLP amalgamate with AAL ?

Advise the M & A team, with reference to applicable legal and regulatory provisions.

(*6 marks*)

3. (*a*) Rana, Mahim and Guru were close friends, who had great interest in the stock market. Gradually, they started trading in stocks and options using various platforms. Whilst they were trying to invest safely, with smaller quantum of money, they were unable to make large gains. During one of the conversations about markets, Guru suggested Rana and Mahim, that they should avail some professional advisory services which would give them inputs about trading in stocks. One of Guru's cousins, had made good money by investing based on the tips he got on whatsapp and telegram apps. Guru, Rana and Mahim also became part of that whatsapp group, and were getting regular updates about stocks. The updates they got were mostly forwarded messages and they made good amount of money using those tips. Gradually, over couple of years, they accumulated funds and were investing higher amount of money. In February 2023, SEBI vide its order imposed a penalty of ₹ 20 Lakhs each on Guru, Rana and Mahim for violating Section 12 A(d) & 12 A (e) of the SEBI Act 1992 and Regulation 3(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015. An appeal was filed by Guru, Rana and Mahim before SAT, stating that they had not violated any provisions, as they just received information by way of forwarded messages on whatsapp. Comment in the background of relevant case law.

(*6 marks*)

(*b*) Apna Dhan Ltd., is a Public Sector Undertaking, manufacturing various beverages. The management of the Company was evaluating to expand its footprint globally, it was planning to spend USD 7,500 for advertisement in foreign print media. The Company also plans to donate USD 2,00,000 to a technical institution established in Chicago at USA for conducting advanced research in the field of beverages. The foreign earnings of the Company for the last four financial years is as follows :

Financial Year	**Amount in USD**
2019-2020	3,250,000
2020-2021	3,500,000
2021-2022	3,750,000
2022-2023	4,000,000

The company has reached out to you, to advise them on the following :

(*i*) Can it spend USD 7,500 for advertisement in foreign media ?

(*ii*) Assuming that Apna Dhan Ltd., is not a Public Sector Undertaking, can it donate USD 2,00,000 ?

Advise in the background of relevant legal provisions.

(*6 marks*)

4. (*a*) The Dazed Inn, is a 40-unit, no frills resort operating in the less scenic part of a major Maharashtra town. Its owner Rane, firmly believes that there is a need for his style of low-cost family accommodation amid the luxury and beauty of the area. His rooms are large, family style rooms, without television. Although there is plenty of space for future expansion, the grounds are fairly bare, with a bit of landscaping.

Rane can serve breakfast to the rooms and provide tea making facilities. There are now a lot of good restaurants and take-aways in the area. Rane's prices are less than half of what similar resort charges and, really, it isn't all that far away from the waterfalls and other attractions.

The problem is occupancy. He has some regulars who come every holiday period. Overall, occupancy is about 50% year around, however, as per data available the average occupancy in similar resorts is 68%. Cars pull-in, drive around the parking areas and then drive away.

Currently, Rane does very little advertising in local district guides and the, holiday papers, mainly because he really thinks word of mouth is the best form of advertising. He is a member of the local tourist committee, but too busy to go to the meetings. However, he does receive local statistics. He is not desperate yet, but he is getting worried about the future.

Rane has requested you to do a SWOT analysis for Dazed Inn.

(*6 marks*)

(*b*) Fun & Feast Ltd (FFL) was a well to do Company with its resorts operating in two locations near Chennai. However, after COVID the Company was unable to recover financially and was referred to insolvency proceedings by its creditors. Roop, an Insolvency Professional, was appointed to sell the property of Fun and Feast Ltd. (FFL). He finds that an undervalued transaction was made by the FFL with Tummarsi (a related party of director), in six months preceding the insolvency commencement date.

Examine the validity of such transaction by FFL with Tummarsi.

(*6 marks*)

5. (*a*) Kirmo Rubber Tubes and Tyres Ltd ('Kirmo') manufactures tyres with a peculiar tread pattern over which it has claimed proprietary rights. Sumo Tubes Private Ltd ('SUMO') also manufactures truck tyres with similar tread pattern like that of Kirmo. During one of the market survey by Kirmo marketing professionals, it was observed that the shopkeepers were selling SUMO tyres saying the design and make is similar to those of Kirmo, thereby causing damage to Kirmo.

Kirmo filed a suit against SUMO for infringement of its proprietary rights and an interim injunction was granted in favour of Kirmo. SUMO moved an application to vacate the stay and contended that the tread pattern of truck tyre is not covered under copyright.

In the background of judicial pronouncements, comment whether SUMO will succeed.

(*6 marks*)

(*b*) Zarana Ltd, a company providing IT & ITES services entered into an agreement with Valcon Ltd, a Company registered in Hong Kong, to provide software services relating to implementation and maintenance of new ERP module. The agreement was for a period of one year, however, due to cost overrun and other administrative issues, there was a dispute between the parties. Valcon Ltd, referred the matter to sole arbitrator based in Singapore and an award was given by the arbitrator in favour of Valcon Ltd. Zarana Ltd filed an application under Arbitration and Conciliation Act, 1996 *inter alia* praying that the enforcement of impugned award be declined. In the background of judicial pronouncement, comment whether Zarana Ltd's contention is justified ?

(*6 marks*)

6. (*a*) In modern businesses, Corporate Secretaries are key managerial personnel occupying pivotal positions in their companies. They have a central role in fostering good governance practices and supporting the development of highly functioning Boards. As sustainability has become a business imperative, it is essential that boards provide stewardship and oversight over a company's sustainability performance. The role of the Corporate Secretary in Sustainability Governance provides an overview of how governance professionals can support the board's emerging "environmental, social and governance" (ESG) mandate.

Company Secretaries also play a vital role in forming the Board's Corporate Social Responsibility policy. It's the Company Secretaries responsibility to consider the best interest of both the organization and its stakeholders. One of the key roles of the Company Secretary is "to ensure that the CEO and the management communicate effectively and frequently with the Board to establish corporate governance, CSR and internal controls required to enable the organization to effectively execute the Business Strategy, and to facilitate a clear mandate being given to the various departments of the organizations."

As a Company Secretary, explain the difference between ESG and Corporate Social Responsibility.

(*6 marks*)

(*b*) Atherno Ltd, was a start-up Company founded by four IIT graduates, for identifying solutions through technology for water contamination and to provide water filters at a lower cost. The Company had already received funding from big angel investors and was planning to expand its operations. As part of their IPO readiness, the Company appointed Srimo, a Practising Company Secretary to review compliance with applicable laws and regulations and also to suggest improvements to the existing processes. After a detailed review, Srimo identified and informed the Directors and Management, various finer points on compliance and how it can be improved further. He emphasised that, the Company should have a robust risk management policy in place, for which the Board of Directors may voluntarily form a risk management committee.

In the background of the above, explain :

(*i*) Legal provisions relating to role and functions of risk management committee.

(*ii*) Outline of risk management policy for the Company.

(*6 marks*)

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