436

***Roll No.* ....**

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

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

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

1. (*a*) WE India Private Ltd, a well-known seller of Android-based car head units, found itself at the centre of a competition law dispute. A consumer rights group, XYZ (the Informant), filed a complaint against the company before the Competition Commission of India (CCI), alleging unfair and anti-competitive practices. XYZ argued that WE India was importing Chinese Android head units but was deliberately concealing the Country of Origin (COO) from its product descriptions on e-commerce platforms. This lack of transparency misled consumers, who were unable to make informed purchasing decisions.

Furthermore, XYZ accused WE of using misleading marketing tactics. The company promoted its products using the tagline "India Ka Apna Brand" on its website, YouTube channel, and other marketing materials, creating a false impression that the products were manufactured in India. Additionally, the company made exaggerated claims such as being "India's No. 1 Android Car Stereo", which could mislead consumers and distort fair competition.

XYZ contended that such deceptive practices not only harmed consumers but also disrupted fair market competition by unfairly disadvantaging competitors who were transparent about product origins.

Does the concealment of the country of origin and the use of misleading branding by WE India constitutes an unfair or anti-competitive practice under the Competition Act, 2002 ? Can such conduct warrant an investigation by the Competition Commission of India (CCI) under Section 4 for abuse of dominance ? Explain with reference to relevant judicial pronouncements.

(*5 marks*)

(*b*) ABC Pvt. Ltd. is a family-owned company where two brothers, Rajesh and Sanjay, are the key shareholders.

- Rajesh (along with his HUF) owns 17.58% of the company.
- Sanjay (along with his family branch) owns 82.42% of the company.

Due to internal disputes, the company held an Extraordinary General Meeting (EOGM) on March 15, 2020, to remove Rajesh from the Board of Directors. Before the meeting, Rajesh approached the National Company Law Tribunal (NCLT), which allowed the EOGM but stated that the resolution passed must be permitted by the Tribunal before taking effect (ex parte interim order on March 14, 2020).

The Issue :

- More than two years have passed, but the case was not decided by the NCLT.
- Rajesh, using this delay and the interim order, continued acting as a director and took steps against the company's and shareholders' interests.
- Due to his interference, Sanjay and other shareholders were unable to start a new project.
- Sanjay and his group moved an application before the NCLT, requesting to hold an EOGM under an independent chairman (appointed by the Tribunal).
- The NCLT allowed this request.

Rajesh, unhappy with this decision, filed an appeal against the NCLT's order. Based on judicial pronouncements, analyse and decide should the appeal filed by Rajesh against thc NCLT's order be allowed or dismissed ?

(*5 marks*)

(*c*) A group of MSME traders engaged in the sale of smartphones and related accessories have approached the Competition Commission of India (CCI), raising concerns about unfair trade practices on online marketplaces.

- DownBasket and PapaGone are major online platforms that allow third-party sellers to list and sell their products.
- The traders allege that these platforms have entered into vertical agreements with their preferred sellers, leading to market foreclosure for other sellers.
- Specifically, it is alleged that :
  (1) DownBasket has exclusive dealings with certain preferred sellers.
  (2) PapaGone has similar exclusive arrangements with its own preferred sellers.
- Many of these preferred sellers are allegedly controlled or affiliated with DownBasket and PapaGone themselves, either directly or indirectly.

The traders claim that such anti-competitive agreements prevent independent MSME sellers from competing fairly, thereby distorting the market. They have requested CCI to direct an investigation into the matter.

Based on judicial pronouncements, should the Director General of the Competition Commission of India (CCI) order an investigation into the alleged anti-competitive practices of DownBasket and PapaGone ?

(*5 marks*)

(*d*) Mr. A, a resident of Kolkata was found to be involved in Hawala transactions and received notices in this regard from concerned Authorities. He approaches Mr. B, a Practising Company Secretary and seeks advice on the procedure to survey contravention under Foreign Exchange Management Act (FEMA), 1999.

Prepare a brief note on provisions of power of survey as provided in section 16 of the Act.

(*5 marks*)

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

2. (*a*) A company engaged in the real estate business planned to raise funds through an Initial Public Offer (IPO) and filed a prospectus with SEBI for approval. The prospectus claimed that the company had a land bank in Chandigarh and Dehradun and that the IPO proceeds would be used for constructing residential flats at these locations. Attracted by this investment opportunity, Ashwin invested in the IPO and received an allotment of shares. However, it was later discovered that the company did not actually own any land bank in Chandigarh and Dehradun. Instead, the company had merely entered into an agreement with the landowner for redevelopment and construction on a leasehold basis. Unfortunately, due to disputes, the landowner refused to allow the company to proceed with its project.

What legal recourse is available to Ashwin, who invested in the IPO based on the misleading information provided in the prospectus ?

(4 *marks*)

(*b*) According to the provisions of the Bharatiya Nyaya Sanhita, 2023 for an act to constitute cheating, there must be a clear intention to deceive from the very beginning. It is not enough for the accused to have been merely negligent; rather, there must be fraudulent or dishonest intent that causes wrongful gain to one party and wrongful loss to another. The law distinguishes between mere negligence and cheating, emphasizing that a deliberate intention to mislead or cause harm is a necessary ingredient. Various judicial pronouncements have upheld this distinction, ensuring that only those with a clear *mens rea* (guilty mind) face legal consequences under cheating provisions.

What are the essential ingredients of the offence of "cheating" under the Bharatiya Nyaya Sanhita, 2023 ? Explain with relevant case laws and judicial pronouncements.

(*4 marks*)

(*c*) ABC Jantrantik Party, a political party is suspected to have been involved in money laundering in contravention of Foreign Contribution (Regulation) Act, 2010. Mr. Ravi, a qualified company secretary was holding the position of Gazetted Officer and is authorized by the Central Government for inspection in the matter.

State the provisions relating to inspection of accounts and records of ABC Jantrantik Party by Mr. Ravi as a Gazetted Officer according to Section 23 of the Act.

(*4 marks*)

(*d*) What are the key amendments to Section 450 of the Companies (Amendment) Act, 2020, and how do they impact the penalties for default where no specific penalty is provided ? How does this amendment enhance corporate compliance and governance ?

(*4 marks*)

OR (Alternate question to Q. No. 2)

2A. (*i*) Aryan Industries Ltd. failed to file the return of allotment for l6 lakh shares allotted on April 20, 2022, and subsequently obtained an order for compounding of the offence on June 10, 2024, However, the company again failed to file the return of allotment for 11 lakh shares allotted on March 4, 2025.

Considering the previous compounding of the same offence, what legal options are available to the company in respect of this second default ?

(*4 marks*)

(*ii*) An offence under Companies Act, 2013 was compounded by Aarav Foods 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 would have been surfaced at the time of deciding compounding fee, compounding authority would have levied higher fee. Since suppression of fact was higher, compounding authority open the matter and revised the compounding fee and asked Company to pay the differentials. Evaluate tenability of action of the compounding authority in light of judicial pronouncement.

(*4 marks*)

(*iii*) What is disgorgement, and under which legal provisions can it be enforced and by whom ?

(*4 marks*)

(*iv*) Mega Resources Ltd., an investment company, was implicated alongside Mr. Arun Kumar Bajoria and others for allegedly acquiring a significant stake in Bombay Dyeing & Manufacturing Company Ltd. without adhering to mandatory disclosure norms.

SEBI contended that the parties failed to comply with the disclosure requirements stipulated under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Specifically, they were accused of not informing the company and the stock exchanges upon crossing the prescribed shareholding thresholds.

On August 29, 2001, SEBl barred Mr. Bajoria, Mega Resources Ltd., and associated entities from accessing the capital market and dealing in securities, directly or indirectly, for one year. Additionally, SEBI appointed an adjudicating officer to investigate potential violations of Section 15A(b) of the SEBI Act, l992, pertaining to the failure in meeting disclosure obligations.

It was admitted by Mega Resources Ltd & Others that the non-compliance with disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the company was due to lack of awareness of the erstwhile regulations and without any mala fide intentions. Hence, based on this ground they appeal to take a lenient view while imposing penalty.

Can ignorance of regulatory provisions, as argued by Mega Resources Ltd., be considered a valid defense against non-compliance with SEBI's disclosure requirements ? Analyze with reference to legal principles and past rulings.

(*4 marks*)

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

3. (*a*) In recent years, Corporate India has increasingly recognized the importance of Enterprise Risk Management (ERM) and has become more engaged in its implementation. However, Indian boards face several significant challenges in designing and executing an effective ERM system. What are the key obstacles that hinder the successful adoption of ERM in Indian organizations ?

(4 *marks*)

(*b*) Pragya Education Ltd. failed to hold annual general meeting within the due date and they failed to place audited financials at the meeting for shareholder's approval. Since financials were not approved at AGM, Directors of the company further failed to file financials and annual returns with Registrar of Companies. Company being a listed company was holding public funds is liable to account for those funds to the shareholders. Series of above defaults attracted offences committed by company and its directors. Directors of the company pleaded that since these offences are connected to one series of acts, they may be charged with and tried at one trial, for every office. Is the plea valid ? Evaluate in the context of a judicial pronouncement.

(*4 marks*)

(*c*) Y Ltd. has appointed Mr. J in the designation of Director in the Board Meeting held on 09.03.2019 through filing of e-Form DIR-l2 dated 11.03.2019. However, the Company has not disclosed the date of Board Meeting held on 09.03.2019 in the Directors Report for F.Y. 2018-19 under Section 134(3)(b) of Companies Act 2013. Advice the company on the grounds to be indicated in show cause notice/adjudicating orders.

(4 *marks*)

(*d*) PQR Ltd. failed to appoint a whole time CS as required under Section 203 of Companies Act 20l3. Advice the company on the grounds to be indicated in show cause notice/ adjudicating orders.

(*4 marks*)

OR (Alternate question to Q. No. 3)

3A. (*i*) Explain the provisions of Forgery and its punishment under Bharatiya Nyaya Sanhita, 2023.

(*ii*) Comment on Value Creation and Value Destruction by Enterprise Risk Management.

(*iii*) What are the Ethics to be followed by Mediator or Conciliator ?

(*iv*) Explain the provision of Class Action Suits under various laws.

(*4 marks each*)

4. (*a*) In exercise of powers, the Central Government directed investigation into the affairs of Bhawna-Nikita Joint Enterprises Ltd. by officers of Serious Fraud Investigation as nominated by Directors, SFIO. Accused were accordingly arrested and Judicial Magistrate granted remand and directed that he be produced before Special Court. Thereafter, the Accused were produced before Special Court with a fresh application for remand. The prayer for extension of custody was opposed by the Accused inter alia on the grounds that the period of completion of investigation as stipulated in the order being mandatory in nature has expired and as such all further proceedings were illegal and without any authority of law. Evaluate in the context of a judicial pronouncement whether extension of custody is justified or not.

(*4 marks*)

(*b*) Nexon Aerospace Ltd. made a payment for importing raw materials intended for manufacturing finished products. During this time, a new Managing Director assumed charge. Although the raw materials arrived in India, the company failed to submit the bill of entry, resulting in the goods being held in a bonded warehouse despite the foreign exchange being remitted. The Adjudicating Authority imposed a penalty on both the company and the Managing Director under the FEMA Act, 1999. Can this transaction be considered a violation of FEMA provisions, and is the Managing Director liable for the penalty, or can he escape it ?

(*4 marks*)

(*c*) Jinzo Games Pvt. Ltd, a real-money gaming platform, filed a lawsuit against Poogle LLC and its subsidiaries after Poogle allegedly discriminated against certain gaming apps, including Jinzo, by restricting their listing on the Play Store. Poogle introduced a policy allowing only certain types of real-money gaming apps (like fantasy sports and rummy) but excluded others, including Jinzo's games. Key legal issues which were raised was :

(*i*) **Discriminatory Policies :** Jinzo argued that Poogle's selective policy was unfair and amounted to anti-competitive behavior.

(*ii*) **Freedom to Conduct Business :** Jinzo claimed that Poogle's restrictions harmed its ability to operate freely in the market.

(*iii*) **Competition Law Violation :** The case involved whether Poogle abused its dominant position under India's competition laws.

Jinzo highlighted that on one hand, Poogle does not allow its app to be listed on Poogle Play Store and on the other, it displays malware warnings when a user attempts to download its app from the website.

Basically, Jinzo contends that Poogle's policy creates a biased marketplace by granting preferential treatment to certain app categories, thereby disadvantaging other developers. This selective approach, according to Jinzo, restricts market access and stifles competition.

In light of relevant judicial pronouncements, critically analyze whether the Competition Commission of India (CCI) should order an investigation in this case.

(*4 marks*)

(*d*) What are the factors to be considered while considering compounding application ?

(*4 marks*)

5. (*a*) The demand for Directors & Officers (D&O) Insurance in India has been rising, as directors are increasingly being held accountable for their management decisions. While a company's liability is limited by shares or guarantee, a director's personal liability remains unlimited, putting their personal assets at risk in case of claims or allegations. In this context, what are the eight key aspects that directors should be aware of regarding their D&O policy ?

(*8 marks*)

(*b*) Compounding signifies an admission of guilt, whether voluntarily, upon receiving a notice of default, or after the initiation of prosecution. It is essentially a compromise or settlement between the regulatory authority and the individual committing the offense. In this context, explain the necessity of compounding and highlight its key benefits.

(*8 marks*)

6. (*a*) State the punishment prescribed under Companies Act, 2013 for the following :

(*i*) Punishment where no specific penalty is provided

(*ii*) Repeated default within 3 years

(*iii*) Punishment for wrongful withholding of property

(*iv*) Improper use of words "Limited" or "Private Limited".

(*b*) Amit Sinha, commonly known as Sethji, has been accused of certain offenses under the SEBI Act, 1992. SEBI directed him to refund the money he unlawfully gained from the stock market and imposed a penalty. However, Amit has neither refunded the amount nor paid the penalty. He has informed SEBI that he has ceased all business activities and is no longer involved in the stock market. What are the possible measures SEBI can take to recover the outstanding amount, whether as a refund or a penalty ?

(*c*) Mr. P who was a Managing Director of XYZ Ltd, was terminated from the position of Managing Director by virtue of an order passed by National Company Law Tribunal (NCLT) under Sec. 242(2)(e) of Companies Act, 2013.

Discuss the consequences of termination as stated under Companies Act, 2013.

(*d*) Differentiate between Punishment for False Statement and Punishment for False Evidence under the Companies Act, 2013.

(*4 marks each*)

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