NEW SYLLABUS

438

Roll No. ....

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 10

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

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

The automobile industry in India is world's fourth largest, with the country currently being the world's 4th largest manufacturer of cars and 7th largest manufacturer of commercial vehicles in 2018. Indian automotive industry (including component manufacturing) is expected to reach ₹ 16.16 - 18.18 trillion (US$ 251.4-282.8 billion) by 2026. Two-wheelers dominate the industry and made up 81% share in the domestic automobile sales in Financial Year 2018-19. Overall, Domestic automobiles sales increased at 6.71 per cent CAGR during Financial Years between April 2012 and March 2018 with 26.27 million vehicles being sold in Financial Year 2018-19. Indian automobile industry has received Foreign Direct Investment (FDI) worth US$, 21.38 billion between April 2000 and March 2019.

Domestic automobile production increased at 6.96 per cent CAGR during the Financial Years between April 2012 and March 2019 with 30.92 million vehicles manufactured in the country in Financial Year 2018-19. In Financial Year 2018-19, commercial vehicles recorded the fastest pace of growth in domestic sales at 17.55% year-on-year, followed by three-wheelers at 10.27 per cent year-on-year. The passenger vehicle sales in India crossed the 3.37 million units in Financial Year 2018-19 and is further expected to increase 10 million units by Financial Year 2019-20.

The government aims to develop India as a global manufacturing as well as a research and development (R&D) hub. It has set up National Automotive Testing and R&D Infrastructure Project (NATRIP) Centre as well as a National Automotive Board to act as facilitator between the government and the industry. Under (NATRIP), five testing and research Centre have been established in the country since 2015.

The Indian government has also set up an ambitious target of having only electric vehicles being sold in the country. Indian auto industry is expected to see 8-12% increase in its hiring during Financial Year 2019-20. The Ministry of Heavy Industries, Government of India has shortlisted 11 cities in the country for introduction of electric vehicles (EVs) in their public transport systems under the FAME (Faster Adoption and Manufacturing of (Hybrid) and Electric Vehicles in India) scheme. The first phase of the scheme has been extended to March 2019 while in February 2019, the Government of India approved the FAME-II scheme with a fund requirement of ₹ 10,000 crore (US$ 1.39 billion) for Financial Years 2020-22. Number of vehicles supported under FAME scheme has increased to 192,451 units in March 2018 from 5,197 units in June 2015.

Automotive industry globally is at the cusp of a major transformation. Growing concerns for environment and energy security clubbed with rapid advancements in technologies for power train electrification, increasing digitalization, evolution of future technologies and innovative newer business models and ever-increasing consumer expectations are transforming the automotive business. One of the key facets of such a change is the rapid development in the field of electric mobility which might transform the automotive industry like never before. With an ambition to be among the top 3 in automobile manufacturing by 2026 (as per the Automotive Mission Plan 2016-2026), Indian auto industry needs to consider an innovative and pragmatic approach to ride this transformative wave.

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Today, with continued efforts of more than a decade, many major economies such as US, China, Netherlands, Norway etc. have promoted electrification of vehicles through various fiscal and non-fiscal incentives and have now gathered momentum in terms of demand, charging infrastructure and manufacturing eco-system. Such countries are perhaps more ready with pure electric vehicles to achieve their regulatory and strategic targets.

India has started late on the electrification path and needs a strong policy to catch-up and move rapidly towards the stated goal of total pure electric technology regime. Pure electric vehicle penetration currently remains quite low in India due to several reasons including significant affordability gap and low level of consumers' acceptance (i.e. lack of demand), low level of electric vehicle manufacturing activities (i.e. lack of supply), lack of comparable products (especially in the 2W category), non-existent public charging infrastructure etc.

Taking cognizance of the advancements in the electric vehicle technology, markets development globally and a dire need to reduce energy demand and de-carbonization of the auto sector in India NITI Aayog's transformative mobility report of 2017 has set out a desirable and ambitious roadmap for pure electric vehicles, wherein, it is said that if India adopts a transformative solution of shared-connected electric mobility, 100% public transport vehicles and 40% of private vehicles can become all electric by 2030. This vision needs to be expanded to have a future of all electric vehicles.

To make sure that this vision is realized, the industry, government and various stakeholders will need to collaborate and invest. Most importantly, the long-term plan for the country for such an endeavor will have to be implemented with full conviction, hundred percent commitment and total perseverance. As the electric vehicle technology is evolving rapidly, it could be possible that transition to hundred percent electric vehicle regime might evolve earlier than envisaged in the stated vision. Therefore, the policy will need to be necessarily adaptive while at the same time must not bring sudden changes so as to allow outcomes in a planned manner and to ensure that the necessary transformation takes place with the minimum of disruption which may have socio-economic impact in terms of industrial growth, employment and livelihood of people in the auto-industry.

Auto-industry will invest with a proper business case even with a certain degree of risk around market readiness of electric vehicles. In not so distant future, such investments are likely to turnaround the electric vehicle scenario in an opportunity. Such investments will run into thousands of crores for the auto-industry towards creating a sustainable market place and a robust manufacturing eco-system for electric vehicles. Already, many automobile manufacturers and auto-component manufacturers in India have launched or announced their plans to develop electric vehicles and related components. Businesses, including the public sector companies, will be looking at setting-up the entire supply chain including cell manufacturing in the country.

It is important to understand the consumers' outlook and concerns as to why growth of market for electric vehicles has been sluggish. The single major factor for slow penetration of EVs is their high price which is around 2 to 2.5 times more than a comparable conventional vehicle. The other important concern of EVs is their range per charge. To offer a higher range, higher battery capacity in the vehicle is needed which lead to increase in the EV price proportionately and increases the price gap. At the same time, however, EV offer a significant advantage on operating cost (running plus maintenance cost) which could be as low as 1/4th of that of a conventional vehicle. As compared to a personal vehicle, commercial vehicles like taxi fleets, bus fleets, 3-wheelers run 4 to 5 times longer distance per day. Therefore, for such higher mileage vehicles savings on operating cost will pay-back the initial high purchase price faster than low mileage vehicles. Attractive power tariff can play a significant role to offset capital cost of buying EV with lower operating cost at faster pace. Most of the personal vehicle buyers consider upfront purchase price, fuel efficiency, maintenance and service cost, comfort features as the key buying criteria. However, commercial vehicle buyers consider capital expenditure (CAPEX) plus operational expenditure (OPEX) cost economics as the most important buying criteria.

It may be noted that automobiles have product development gestation of minimum of 3 years and product manufacturing life-cycle of around 8 to 10 years. Therefore, it is important to understand the level of effectiveness of each policy measure and acceptability of the policy measures from a long-term implementation perspective.

In this respect, a mix of policy measures which are equitable, implementable and can be sustained on a long-term basis with minimum fiscal burden and maximum impact and outreach. It may be noted that various policy measures have different level of impact on the market and their criticality. The policy measures which result in acceptance of electric vehicle technology are the most critical.

Questions :

(*a*) Explain in detail the components of SWOT analysis and also discuss in brief the SWOT analysis of present Automobile Industry ?

(*b*) "In a country like India, electric vehicles are need of the hour". Outline the opportunities for electric vehicles in India.

(*c*) What should be the policy measures and recommendations to provide impetus to the Electric Vehicle industry that would counter the impending threats.

(*d*) As a Company Secretary, what would be your suggestions for the Government for increasing the usage of Electric Vehicle in the Country through regulatory initiatives.

(*10 marks each*)

2. (*a*) ABC Limited is an unlisted public Company, is part of ABC group of Companies with its business ranging from paper to pharmaceutical manufacturing. The Company's Pharmaceutical manufacturing division was under scanner of US Foods and Drug Administration (USFDA) and there were pending investigations against the said unit. As a part of its corporate restructuring, the Board of ABC Limited has decided to demerge its pharmaceutical manufacturing business to a new Company and merge another paper manufacturing Company with ABC Limited.

A Composite scheme of amalgamation was filed under section 230 of the Companies Act, 2013 read with the rules thereunder. The National Company Law Tribunal (NCLT) rejected the Company's application on the ground that investigations are pending against the demerged unit.

Is the ground for rejection by NCLT justified ?

(*b*) An appeal was filed by X, a minority shareholder against M/s XYZ & Sons Limited alleging oppression and mismanagement by majority shareholders. As per the shareholding pattern, X and another shareholder held less than 10% and the rest by shareholders who individually held more than 10%. The National Company Law Tribunal passed an Order, granting waiver in favour of X under proviso to Section 244(1) of the Companies Act, 2013 for the petition alleging oppression and mismanagement in the Company. An appeal was preferred against the said Order by M/s XYZ & Sons Limited.

Evaluate the validity of the appeal in the background of decided case law, if any.

(*6 marks each*)

3. (*a*) N was a senior official of Xeta Limited, a listed Company. He was convicted for involvement in insider trading and manipulation of share price of the Company. The adjudicating officer levied penalty as provided in the Securities and Exchange Board of India Act, 1992, for which the recovery officer issued a certificate of recovery including interest on penalty. N filed an appeal before the Securities Appellate Tribunal challenging that the interest cannot be levied by the recovery officer.

Is N's argument tenable ?

(*b*) Zom entered into a buyer's agreement with EMANKI Land Developers Private Limited in the year 2015. As per the agreement the possession of flat was to be handed over in January 2018. The Company was deferring the handing over of flat for almost a year. In January 2019, Zom filed a consumer complaint before the NCDRC against the Company praying for delivery of possession of the flat, adjustment of excess payment and compensation for deficiency in service. As the agreement also provided for an arbitration clause providing for settlement of disputes between parties under the Arbitration and Conciliation Act, 1996, the Company filed an application under Section 8 of Act for referring the matter to arbitration.

Will the Company be successful in having an arbitration in respect of said matter ?

(*6 marks each*)

4. (*a*) Alkaline Private Limited is a chemical manufacturing company, which had availed many bank loans and other facilities to fund its operations. The company has not been able to repay the loan and interests thereon to the banks due to its dwindling sales and other cost/labor issues. Over a period, as the company was not repaying its loans, its account was classified as Non-Performing Asset (NPA) by the banks. Various negotiations with the banks did not materialize and the banks-initiated proceedings under Insolvency and Bankruptcy Code, 2016 (IBC) against the company.

The Company is of the view that IBC does not have constitutional validity and accordingly, it appealed in court of law. Will the Company succeed ?

(*b*) 'Q Cars' was a radio taxi service provider, which was offering customer discounts and royalty programmes, etc., M group was a competitor who alleged that owing to its dominant position, 'Q Cars' group has devised certain abusive practices which inter alia include unreasonable discounts amounting to abysmally low/predatory pricing to consumers etc., to adversely affect and oust its competitor from the relevant market. It was also alleged that under its business arrangement, 'Q Cars' was giving whole trip amount received from the passengers to the respective taxi drivers along with additional incentives in order to get them attached exclusively with the 'Q Cars' network. It also alleged that 'Q Cars' enters into exclusive contracts with taxi owners in violation of provisions of Competition Act, 2002, whereby the taxi drivers are restrained from getting attached on to any other competing 'radio taxi operator' network.

Has 'Q Cars' contravened the provisions of the Competition Act, 2002 ?

(*6 marks each*)

5. (*a*) The Statutory Auditor of your Company allegedly got transferred 1000 shares of the Company in his name. However, the matter was ultimately resolved and settled between Auditor and the complainant, despite which Disciplinary Committee of Institute of Chartered Accountants of India (ICAI) took up the case and ultimately found that the conduct of Statutory Auditor was derogatory in nature and highly unbecoming and held him guilty of 'Other misconduct' under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

The Council of ICAI removed the Auditor from the rolls for a period of six months. The Auditor appealed against the same. Will he succeed ?

(*b*) A Kerala based company had a cement unit in Salem in the State of Tamil Nadu. Unit became Sick and the Company was not in position to pay wages to its labours. The workers approached Labour Court. Labour Court passed an award in favour of workers. In the meantime, a lender in Kerala attached Company's properties and sold in public auction. Workers filed writ before Kerala High Court seeking deposit of 50% of their dues by the lender. Single Judge overruled the jurisdiction issue in favour of workers. Lenders preferred an appeal before Division Bench and the same was allowed by the Bench.

Aggrieved by the decision, workers appealed before Supreme Court. Will they succeed ?

(*6 marks each*)

6. AB & CD Limited, a Non-Banking Finance Company (NBFC), was a diversified Company having a complex group structure with more than 20 subsidiaries. Each company had its own Finance department which would report to a Central Finance Team headed by the group CFO. All the Companies and different units of AB & CD Limited were functioning in silos, wherein each one was unaware of the performance of other companies. There were inter-corporate loan arrangements between Companies in the group. The top management consisted of few professionals and family members. All the top executives were being paid higher remuneration in comparison with the industry benchmarks including high number of stock options.

AB & CD Limited had a whistle blower policy monitored by the Audit Committee. Vyom, a qualified Senior Accountant, working in the Company had approached the Director (Finance) with concerns about the financial statements but he could not get satisfactory answers and so threatened to inform the press. When his threat came to the attention of the Board, he was intimidated to keep quiet.

Another employee had written to an independent director stating that the books of the Company had been manipulated. Although this letter was circulated to the Board, no action was taken. The audit committee also failed to take any action.

When the group was not able to repay its loan to banks, there were concerns from bank and forensic audit was initiated. The forensic audit revealed a fraud within the Company and the share price of the Company plummeted.

Based on the above facts, answer the following :

(*a*) What is the role of Independent Directors and Audit Committee for effective oversight of matters pertaining to Whistle blower complaints ?

(*b*) What are the challenges of effective implementation of a Whistle blower policy in a company such as AB & CD Limited ? Give your suggestion for devising better Whistle blower mechanism.

(*6 marks each*)

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