

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 8

NOTE : Answer ALL Questions.

1. (a) A Listed Company was awarded three contracts of drilling rigs. The value of contracts are substantial to the revenue of the Company. As per the normal procedure for bidding there was a time gap between the dates of declaration of the announcement as top bidder and the announcement of the award. This information is considered as 'Price Sensitive' until the stock exchanges were informed, but the company thought that it will inform only after declaration of official award of the contract. However, the officials of the Company were "RESTRICTED" from dealing in the shares of the company immediately after the announcement as top bidder.
- In the meantime, the Managing Director of the company before submission of this information to the stock exchanges put this information on Facebook timeline and his friends on facebook made likes and some even bought shares.
- As a Company Secretary elaborate based on a decided case, whether the posting of this on the Facebook timeline.
- (i) Made the other friends a 'connected person'.
- (ii) Whether this meant an access to 'Unpublished Price Sensitive Information'.

(5 marks)

- (b) An unlisted public company has Authorised Share Capital of 10,00,000 Equity voting shares of ₹ 10 each of same class. The subscribed and fully paid up Share Capital of the Company is 8,00,000 shares of ₹ 10 each. To comply with statutory provisions on dematerialisation of shares, the company applied for allotment ISIN with a depository for the entire authorised share capital instead of application for paid up share capital.
- (i) Examine the validity of the process adopted by the Company quoting relevant provisions.
- (ii) What is the penalty, if any, prescribed for violation of process in such cases under Securities Contracts (Regulation) Act, 1956.

(5 marks)

- (c) An Assistant Commissioner of Goods and Services Tax (GST) based on the returns filed by a taxable person is of the opinion that the taxable person has suppressed some transaction relating to goods/services and also claimed input Tax Credit in excess of his entitlement under the Goods and Services Act. Therefore, he authorised another officer in writing to inspect the place of business of that taxable person. The taxable person has not allowed the authorised officer to enter his place of business, as he claimed that it is not tenable order u/s 67(1) of the CGST Act.

Do you agree with the argument of the taxable person, can the authorised officer inspect place of business. Quote relevant provisions to justify your answer.

(5 marks)

- (d) Competition Commission of India is proposing to initiate *suo moto* inquiry against a Company, which is controlling more than fifty percent of market share in the industry. List out the factors to be considered in determining the dominant position of an enterprise.

(5 marks)

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

2. (a) A Bank lent money to borrowers against security of gold ornaments. The Gold ornaments were valued by a Gold Appraiser. The Bank lent 60% of the certified value of the gold. An employee of the Bank who is a man of integrity realised that the Gold Appraiser had colluded with the Loan Manager and the security provided was not 'gold ornaments' but 'gold plated ornaments'. Advise the employee on his course of action.

(4 marks)

- (b) A Shareholder of a Company brought an action for damages against the Company and its two Directors on the ground that they have been negligent in selling a property owned by the Company for ₹ 75 crore whereas its real value was ₹ 100 crore. Is this suit maintainable ?

(4 marks)

- (c) The Company Secretary of a Company was allotted quarters during the tenure of his employment. He has retired on 31st March, 2019. As per the terms of his employment, he is required to vacate his quarters within one month of his ceasing to be in employment. i.e. by 30th April, 2019. He seeks one year to vacate the premises on the ground of his children's education. The Company wants him to vacate as it has to allot it to the new Company Secretary. What would be your advice to the Company under the given circumstances ?

(4 marks)

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- (d) During the course of investigation under Section 217 of the Companies Act, 2013 it is revealed that the company has taken loans worth ₹ 100 crore from a consortium of Banks in India and failed to repay them as per the terms of the loan agreement. Further, the Managing Director of the Company, who is a UK National has moved to London and is not responding to the inquiries by the Investigating Officer. You are required to advise the Bank on the steps to be taken to collect evidence as well as to recover the money lent by the Bank to the Company.

(4 marks)

OR (Alternate question to Q. No. 2)

2A. Comment :

- (i) 'The term 'fraud' has been defined for the first time in the Companies Act, 2013' — Briefly, discuss the background and importance of the definition of 'fraud' under the Companies Act, 2013.
- (ii) 'De-criminalisation of most offences under the Companies Act, 2013 is key to E-adjudication framework' — Elaborate highlighting recent developments in this context.
- (iii) 'There is a difference in legislative intent for incorporating Section 441 and Section 454 under the Companies Act, 2013' — Discuss.
- (iv) 'The words "oppression" and "mismanagement" are not defined in the Act. The meaning of these words for the purpose of Company Law should be used in broad generic sense and not in any strict literal sense' — Discuss citing suitable case law.

(4 marks each)

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

3. (a) Are the following offences compoundable and if yes, by whom ?
- (i) Failure to maintain Register of Members and Debenture-holders
 - (ii) Fraudulently issuing duplicate share certificates
 - (iii) Failure to keep proper books of accounts
 - (iv) Tampering with minutes of meetings.
- (4 marks)
- (b) Answer with reasons, under COFEPOSA, 1974 :
- (i) Can Maharashtra Government order detention of a person in Gujarat ?
 - (ii) A detention order has been issued against a person on several grounds. Some of these grounds have been proved to be non-existent. Is the detention order still valid ?
 - (iii) Can a person detained in Mumbai be shifted to Ahmedabad and detained there ?
 - (iv) Can any, restriction be imposed on a detained person with respect to communication with others ?
- (4 marks)
- (c) One of a relative of an Authorised Officer under Prevention of Money Laundering Act (PMLA), annoyed by his neighbour, passes a false information to the authorised officer that his neighbour is keeping smuggled gold bars. Based on the information of his relative, authorised officer conducts search in the place and found nothing. Affected person claims that the search conducted by authorised officer is vexatious. Whether claim of the affected person is tenable. Briefly discuss the provisions under PMLA with punishment for vexatious search.
- (4 marks)

- (d) An assessing officer who is empowered to impound the books of Accounts has impounded the books of Accounts under section 131(3) of the Income Tax Act, 1961 without writing and retained such books for one month for in-depth checking. Comment upon the manner of impounding and retention of books, whether it is valid or not with justification.

(4 marks)

OR (Alternate question to Q. No. 3)

3A. Write short notes on :

- (i) 'Consent Order' issued by SEBI.
(ii) 'Search' and 'Seizure' under Prevention of Money Laundering Act (PMLA).
(iii) 'Cognizable' and 'Non-bailable' offences under the Companies Act, 2013.
(iv) Inspection of accounts or records under Foreign Contribution (Regulation) Act, 2010.

(4 marks each)

4. (a) 'Companies Act, 2013 allows settlement of disputes even through Mediation and Conciliation' — Enumerate the matters which cannot be referred to Mediation and Conciliation.

(4 marks)

- (b) 'Under the Companies Act, 2013, where a Company seeks compounding before institution of any prosecution, no prosecution shall be instituted in relation to such offences either by Registrar of Companies or any person authorised by the Central Government' — Discuss the objective of providing Compounding, immunity and its economic benefits.

(4 marks)

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- (c) 'Though the term 'settlement' is widely used in stock exchanges and securities market, Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 has different meaning to it' — Discuss and also brief on the terms of settlement as per aforesaid regulations.
- (4 marks)*
- (d) 'There are monetary limits for each authority to compound the offence' — Enumerate the powers of Reserve Bank of India and Enforcement Directorate to compound contraventions.
- (4 marks)*
5. (a) 'In today's environment, directors and officers are exposed to risk of personal financial loss as a result of serving a Director or Officer of the Companies' — Discuss the statement and also elaborate on tools available for mitigation of such risks.
- (b) 'Managing Social media is one of the important facets of present Brands' — Discuss the statement quoting live incident(s) and as a Company Secretary suggest briefly, the ways for managing such crisis.
- (8 marks each)*
6. (a) Registrar of Companies (RoC) prosecuted a Director of a Public Sector Undertaking under the provisions of the Companies Act, 1956 for non-filing of Balance Sheet and Annual Return. The Director pleaded before the Court that the RoC has not followed appropriate procedures while prosecuting him. Whether pleadings of the Director is tenable. Elaborate the provisions of CrPC citing relevant case law.
- (4 marks)*

- (b) A Director of a Limited Company was prosecuted before Metropolitan Magistrate for certain offences involving a punishment up to 3 years imprisonment under the provisions Companies Act, 2013. The Director contended that Metropolitan Magistrate is not the appropriate Authority to try this case. Whether this contention of the Director is valid ? Referring the relevant provisions of the Companies Act, 2013, discuss the powers of various Courts to try the offences under the Companies Act, 2013.
(4 marks)
- (c) Upon prosecution for offences under the Companies Act, 2013, High Court awarded Managing Director of a Company an imprisonment of 3 months. A Director of the Company approaches you seeking advice on filing an appeal against the order of the High Court. Referring to relevant provisions of CrPC, advice the Director.
(4 marks)
- (d) Food Department prosecuted a Director of a Multi-National Company for certain offences. The Case went upto Supreme Court, wherein the Director contended that though he is one of the Director of the Company, he was not in-charge of operations of the Company and hence, cannot be prosecuted. Discuss with relevant case law, if any.
(4 marks)

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