

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 11

NOTE : Answer **ALL** Questions.

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

Brief facts :

In the year 1981, the Phosphates Company Limited was incorporated as a joint venture between the Government of India and Republic of Nauru with the objective of manufacturing of Di-Ammonium Phosphates.

Later on, in the year 1993, the Republic of Nauru disinvested its entire equity stake to the Government of India and the company became a wholly-owned public sector undertaking of the Government of India having its corporate and registered office at Bhubaneswar. (Odisha)

Due to deteriorating financial position of certain public sector units, the Government of India on 19.05.1998 decided to temporarily enhance the age of superannuation of all central public sector employees from 58 years to 60 years on the premise that the move may help industries to cut down their losses. Pursuant to the said order dated 19.05.1998, the Company implemented the said order vide order dated 19.11.1998 with retrospective effect from 27.05.1998.

Inspite of the enhancement of age of superannuation, the financial performance of the company still did not improve. The Government of India issued an Office Memorandum dated 22.08.2001 to all central public undertakings including the said company intimating its decision to roll back the age of superannuation of all the employees of public sector undertakings from 60 years to 58 years. Before this Memorandum, the Government of India, on 08.06.2000, had also advised the company to review the decision on enhancement of age of superannuation but the company did not take any decision on the said advisory.

In the meanwhile, the Government of India, on 28.02.2002, divested its 74% shareholding in the said company in favour of M/s Zuari Maroc Phosphates Ltd. (“Zuari”), thereby, keeping only 26% shareholding in its favour. As per the shareholding agreements, it was provided that all the decisions taken by the Board of directors of the company, prior to the date of the disinvestment, shall be binding on all concerned.

In order to revive its financial health, the Board of directors of the Company decided to fill-up the vacancies of Security Guards by engaging an outsourcing agency. As many as 27 Security Guards were employed through outsourcing against vacant posts. In the month of April 2002, some robbers attacked in midnight with arms weapons. Five security guards who were on duty and safeguarding the property were injured. The robbers could not succeed in their nefarious designs. One security guard lost his hand during the firing and another security guard lost his eye. The Union of Security Guards moved an application for regularization of their jobs and also demanded the same pay scale as given to para-military forces under the principle of Equal Pay for Equal Work. The Union also demanded compensation to injured security guards. The Company rejected their claim on the plea that they were contractual labour. As a consequence, the Union filed a petition.

Thereafter, on 17.07.2002, the Company, by office order, withdrew the earlier office order dated 19.11.1998 and restored the age of superannuation to 58 years in respect of all the employees in terms of Certified Standing Orders and Service Rules of the Company.

Being aggrieved, the Trade Union raised dispute with regard to the above and the Odisha Government also made a reference under Section 12 read with Section 10 of the Industrial Disputes Act, 1947 to the Industrial Tribunal.

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Questions :

- (a) Can an employer change the service conditions of the employees by amending, modifying or cancellation of certified Standing Orders ? If so, what is the procedure to be followed by the employer ? Is there any contravention of the provisions of the Industrial Disputes Act, 1947 in the present case ? Give reasons in support of your answer.
- (b) Can contractual workers, who were security guards in the company, raise the demand for permanent jobs in the company wholly-owned by the government even if no vacancy is advertised for the post ?
- (c) Can the contractual workers demand compensation from the principal employer due to permanent disablement for an injury caused in the course of employment with the company ? Give reasons in support of your answer.
- (d) What do you mean by 'Equal Work, Equal Pay' ? Can the employer differentiate the pay scales for same work or work of a similar nature ? Whether the claims of the security guards are sustainable ? Give reasons in support of your answer.

(10 marks each)

2. (a) Lala Karori Mal held 5,35,30,960 equity shares of face value of ₹ 10 each in Sarvodya Agrotech Ltd., a listed company. The holding amounted to 39.88% of the company. The present market value of the share is ₹ 368/- per share. He died on 29.03.2020 without filing any nomination. However, he executed a will 3 months prior to his death in favour of Mrs. Jamuna Devi, his wife. Two witnesses duly attested the will in the prescribed manner and same was registered with the Registrar. The shares were held in dematerialization form with Karvy Stock Broker (Depository Participant). Due to violation of various laws, rules and regulations, SEBI banned the depository participant and instructed it to transfer the shares with new Depository Participant within 3 months. Accordingly, Karvy as well as CDSL (Depository) sent the Notice through email as well as courier to all investors.

Sampat Kumar, son of late Lala Karori Mal, filed a partition suit in High Court claiming entitlement to one-fourth of the estate of his father including the deceased's shareholdings in the said company. The High Court passed an interim order maintaining *status quo* concerning shares and other immoveable property.

While the suit was pending in the High Court, Sampat Kumar filed Company Petition alleging oppression and mismanagement under sections 241 and 242 of the Companies Act, 2013 against his mother and others. He claimed eligibility to maintain the petition on the ground of being a holder of 0.03% shareholding and claiming entitlement and legitimate expectation to 9.97% shareholding of Sarvodya Agrotech Ltd. by virtue of

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his being the son of deceased Lala Karori Mal. Mrs. Jamuna Devi challenged the maintainability of the petition on the ground that Sampat Kumar was not the holder of the required number of shares to file the petition.

Question :

Whether the dispute raised as to the inheritance of the estate of the deceased is a civil dispute or could it be said to be an act of oppression and mismanagement in the affairs of the Company ?

Whether such a dispute could be adjudicated in a company petition filed during the pendency of the civil suit ?

(6 marks)

(b) Hari Vinayak was the Director (Finance) of Engineers Techno India Limited, a BSE Listed Company. After completing 4 years in the company, he resigned from the post of Director (Finance) w.e.f. 20.12.2020 citing some personal reasons. His resignation was accepted in the ensuing meeting of Board of directors held on 20.01.2021. Form DIR 12 was also filed in Registrar of Companies.

Godawari Construction Pvt. Ltd. filed a complaint against Hari Vinayak. It was alleged that the accused had issued cheques dated 15.02.2021 and 28.02.2021, which were dishonoured upon presentation. There was, however, no allegation that the cheques were post-dated. Accordingly, summons were issued against Hari Vinayak. On the other hand, Hari Vinayak preferred a miscellaneous writ petition for quashing the same. He took the defence that he had already resigned from the Company on 20.12.2020, which was accepted by the Board of directors on 20.01.2021. The High Court dismissed

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the petition without considering his contention that he had resigned from the Director of the company prior to the issuance of the cheques.

Hari Vinayak then preferred a fresh application under section 482 Cr.P.C. to quash the summons. It was dismissed by the High Court opining that since the earlier miscellaneous application for the same relief had already been dismissed, the second application was not maintainable.

Hari Vinayak intends to file a special leave petition against the order of the High Court. Will he succeed ? Give reasons in support of your answer and refer to case law, if any.

(6 marks)

3. (a) Michael E. Porter's Five Forces Analysis model provides valuable information to support strategic management, especially in addressing relevant issues in the external environment of the business. These issues are based on external factors that represent the degree of competitive rivalry in the industry, the bargaining power of customers or buyers, the bargaining power of suppliers, the threat of substitution, and the threat of new entrants.

Super Foods Ltd., a fast food company operating in South India, intends to apply the said model to survive and grow. Explain how can the company prioritize the strategic issues related to competition, consumers and substitutes.

(6 marks)

- (b) Competition Commission of India received complaints against Karisma Broadcasting Ltd. for abusing its dominant position. Accordingly, Director General started investigations and a raid was carried out. In the course of raid, some documents and property were seized.

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Karisma Broadcasting Ltd. filed the writ against such search and seizure. The main averments of the writ petition were that the Director General had no power to seize the property.

Explain whether the petition filed by the company is maintainable in the court of law. Give reasons in support of your answer and refer to case law, if any.

(6 marks)

4. (a) A Public Interest Litigation (PIL) was filed in the Supreme Court of India under Article 32 of the Constitution of India by a society registered under the Societies Registration Act, 1860.

In the petition, it was mentioned that as per the WHO India guidelines and recommendations, 50% of the victims die in the first 15 minutes due to serious cardiovascular or nervous system injuries and the rest can be saved by providing basic life support during the 'Golden Hour'. Right to life is enshrined under Article 21 which includes right to safety of persons while travelling on the road and the immediate medical assistance as a necessary corollary is required to be provided and also adequate legal protection and prevention from harassment to good Samaritans. The petition further stated that the honourable court issue guidelines and directions including a command for compliance of guidelines and Standard Operating Procedure (SOP) to be issued by the Government of India, Ministry of Road Transport and Highways under Article 32 read with Article 142 of the Constitution of India till such time as the legislature steps into substitute them by proper legislation.

Explain whether such types of petitions are maintainable by the Court.

(6 marks)

- (b) On the evening of August 7, 2020, Air India Express Flight 1344 crashed with 190 people on board during a botched landing attempt at Kozhikode Calicut International Airport. Eighteen people were killed in the Air India crash and more than 150 others sustained injuries.

The weather was bad and there was low visibility. The pilot circled the airport before asking Air Traffic Controllers to switch runways.

ATC granted the request and cleared the flight to land on a tabletop runway with a sudden drop-off at the end. Passengers recalled that the Boeing 737 swayed violently before touching down. They alleged that pilot never gave a warning sign to passengers or indicated that something was wrong.

The legal heirs of two passengers Chandran and Lalitha (Wife of Chandran) filed two separate claim applications before the Tribunal. By a common Award, the Tribunal allowed the applications. For the death of both, the Tribunal awarded a total sum of ₹ 4,36,95,740 to the claimants.

The Insurance Company challenged the award before the High Court. The claimants also challenged the award before the High Court for enhancement of compensation amount awarded to them by the Tribunal. By impugned common judgment, the High Court reduced the compensation to ₹ 3,75,00,000.

Challenging the said judgement of the High Court, the Insurance Company appealed before the Supreme Court seeking further reduction in the award of compensation. On the other hand, the claimants appealed seeking enhancement in the compensation. Analyse, referring to decided case law, whether the appeal is admissible ?

(6 marks)

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5. (a) A company XYZ Ltd. had been mis-reporting its financial statements since more than 10 years which none of the stakeholders noticed for years. When the situation of the Company went from bad to worse and it had no option but to declare it bankrupt, the company issued a press statement that there is a disparity between actual and reported results due to accounting errors.

The first question from shareholders of the Company was as to why the auditors had not spotted and corrected the fundamental accounting errors ?

The auditors of the Company (one of the largest audit firms in the country) had compromised its independence by charging a huge audit fee and also consultancy income worth several times the audit fee. It had knowingly signed off inaccurate accounts in order to protect the management of the Company. The investigation also found a number of significant internal control deficiencies, external reporting processes, and a disregard of the relevant accounting standards.

Based on the above facts, answer the following :

- (i) Does the case highlight importance of independence of auditors ? Explain provisions under the Companies Act, 2013 which promote independence and rotation of auditors.
- (ii) NFRA constituted under the Companies Act, 2013 has been vested with powers for action against the auditors. Explain powers and functions of NFRA.

(3+3=6 marks)

- (b) ABC Ltd. and XYZ Ltd. had executed an agreement. As per the contract, XYZ Ltd. was to provide manufacturing, civil and manpower services at project site of ABC Ltd. There were certain timelines for each activity, on failure of which, there

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was provision for imposing liquidated damages. As per liquidated damages clause, the specified amount of damages was to be paid by the breaching party (XYZ Ltd.) if it failed to perform specified obligations. The validity of the contract was 5 years.

Due to strike by various labour unions and industrial unrest, the project got delayed and ABC Ltd. imposed liquidated damages to the tune of ₹ 10 Crores. XYZ Ltd. protested the said penalty and raised the dispute as per provisions of the contract. As per Arbitration Clause, the Chairman and Managing Director of ABC Ltd. was the competent authority to appoint the Arbitrator and accordingly he nominated one Roshan as the sole arbitrator. XYZ Ltd. challenged such nomination and cited the judgment of Supreme Court in matter of TRF Ltd. Vs. Energo Engineering Projects Ltd.

Whether the appeal of XYZ Ltd. is admissible ? Give reasons in support of your answer.

(6 marks)

6. (a) Paras Pharma Ltd. had accepted deposits since 2002 and regularly paid maturity amounts till 28.02.2013. In 2013, the company started facing liquidity problems and incurred losses.

The company filed application before the Company Law Board and obtained relief under section 58 AA read with section 58A (9) of the erstwhile Companies Act, 1956 and get instalments fixed to repay deposits.

Whether the said company, which has already got relaxation from CLB under Section 58AA read with Section 58A (9) the erstwhile Companies Act, 1956 and got instalments fixed to repay deposits, can again apply for re-fixing of periods, instalments and rate of interest for repayment of deposits accepted before commencement of the Companies Act, 2013.

Give reasons in support of your answer.

(6 marks)

Contd.

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(b) You are the company secretary of a listed food manufacturing company. Your Chairman informs you that he has been asked to meet with two major shareholders of the company. They are institutional investors who together own about 6% of the company's equity shares. Both of them have stated publicly their policy of socially responsible investment and the purpose of the meeting is to discuss social and environmental issues and the company's policy on corporate social responsibility.

As a company secretary you are required to write a brief note for the Chairman on the following issues :

- (i) Role of institutional investors in good corporate governance.
- (ii) The socially responsible investment principles for institutional investors and the ways in which institutional investors may pursue a socially responsible investment strategy.

(6 marks)

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