

Roll No.

Total No. of Questions – 7

Total No. of Printed Pages – 15

Time Allowed – 3 Hours

Maximum Marks – 100

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Answer to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate who has not opted for Hindi medium, his/her answers in Hindi will not be valued.

Question No. 1 is compulsory.

Candidates are also required to answer any **five** questions from the remaining **six** questions. In case, any candidate answer extra question(s)/sub-question(s) over and above the required number, then only the requisite number of questions first answered in the answer book shall be valued and subsequent extra question(s) answered shall be ignored.

Working Notes should form part of the respective answers.

Wherever necessary, suitable assumptions may be made and disclosed by way of note.

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1. (a) PMK Ltd. having a paid up capital of ₹ 65 crore during the preceding financial year has appointed Mr. Z a Chartered Accountant, as CFO of the Company, who is appointed as Key Managerial Personnel under Section 203 of the Companies Act, 2013. The financial position of the company was not good. In the meanwhile, the CEO was given to understand that the company is statutorily required to appoint Internal Auditor and as such the Board had authorized the CEO to appoint a person who must be a Chartered Accountant. CEO wanted to know the followings :
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- (i) What are the requirements for appointment of the Internal Auditor by the Company ?
- (ii) Since the financial position of the company was not good, can the company decide to give additional duties of Internal Auditor to Mr. Z to comply with the provision of the Act. Critically analyse the decision of the company.

(b) Mr. Abhi was appointed as an additional director of Pioneer Limited on 14th March, 2016. The annual general meeting of the company was scheduled to be held on 29th September, 2016 but due to heavy rains and floods all records of the company were destroyed. In order to rebuild the records, the company approached the Registrar of Companies for extension of time for holding the annual general meeting till 30th December, 2016. In the light of the Companies Act, 2013 advise Mr. Abhi, who was appointed as additional director during the year.

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(c) The composition of the Board of Directors of a listed company as on 31-03-2017 comprised of (i) Mr. A, Director, (ii) Mr. B, Director (iii) Mr. C, Director (iv) Mr. D, Director, (v) Mrs. E, Independent Director, (vi) Mr. F, Independent Director and (vii) Mr. G, Independent Director.

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Mr. D & Mrs. E vacated their office of Director on 15-03-2017.

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You are required to examine with reference to the provisions of the Companies Act, 2013 and what course of action would you suggest which can be taken up by the Company in this regard ?

- (d) A Car manufacturer before beginning the manufacturing and delivery of newly introduced Cars into the market with effect from February 1999, with the installed capacity of approximately more than 50,000 cars in a year, invited the prospective customers to book the car through dealers. The booking amount demanded by the company was quite high and close to the estimated price finally payable which would include excise duty, sales tax and transportation charges. None of the persons who made the booking or purchased the car or withdrew the deposits with or without interest. However 3 complaints were made before the Commission by persons who claimed that they had intentions to make the booking but were dissuaded by the high quantum of deposit required for the purpose. Their specific objection was that the demanded amount exceeded the basic price of the car if cess, taxes and transportation cost were left out. According to the complainants, the company has indulged in Unfair Trade Practice by demanding an excessive amount for bookings of cars and by including the likely taxes, cess and transportation cost.

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Discuss the case with reference to the provisions of competition laws.

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- (e) A company "issuer" was in the process of making an offer of Right issue of the specified securities. All the process was completed and the arrangement was complete. Mr. M, a director of the company was categorized as a 'Wilful Defaulter' by a Bank in accordance with the guidelines issued by the RBI. Advise the "Issuer" whether it can proceed to offer the securities through the right issue. **4**

Will your answer differ, had it been a public issue ?

2. (a) Supreme Ltd. declared dividend @ 10% on its 10 lakh equity shares of ₹ 10 each on 30th September 2016. The dividend warrants were despatched to all the shareholders except three shareholders, holding in total 50,000 shares, due to dispute regarding title over the shares pending in court. On ascertaining the position on 30th October 2016, it was observed that dividend warrants for ₹ 1.50 lakh were not encashed by the remaining shareholders. Explain, with reference to provisions of the Companies Act, 2013, the actions to be taken by the company to deal with the unpaid / unclaimed amount of dividend. Also state the consequences if default is done in this matter. **8**

- (b) An officer of a company was allotted one room for two years in a guest house owned by the Company at some other city where he used to stay while on tour. It came to notice of the company that he had not vacated **4**

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the said room after the expiry of two years and is holding the unauthorized possession of that room and has been permitting to stay outsiders in the said room, at a rent of ₹ 500 per day. The record shows that he had permitted the outsider for 45 days and collected ₹ 22,500 and retained the said amount with him. As per the letter of allotment, there was no such clause which can be invoked against him for making any recovery on account of such wrongful occupation. The Manager of the company seeks your advice as to whether the recovery can be made from him under any of the provisions of his employment or Companies Act.

(c) Ms. Ashima daughter of Mr. Mittal (an exporter), is residing in Australia since long. She wants to buy a flat in Australia. Since she is unmarried, she wants to make her father Mr. Mittal a joint holder in that flat, for which entire proceeds are to be paid by her.

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- (i) What are the provisions of FEMA governing such type of transaction ?
- (ii) Can Mr. Mittal join her daughter in acquiring such a flat in Australia ?
- (iii) Mr. Mittal, wants to receive advance payments against his exports from a buyer outside India. What are the relevant provisions ?

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3. (a) There are four directors in Two Squares Ltd. Mr. Rao, being the director in station, has been authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc. Whether as per provisions of the Companies Act, 2013, he will be treated as managing director of the company ? Also narrate the procedure of appointment of a managing director in a company.

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(b) Mr. Z, a director of Southern Highway Tolls Private Limited, is duly authorized by the Board of directors to prepare and file returns, report or other documents to the Registrar of Companies on behalf of the company. Though he filed all the required documents to Registrar in time, however, subsequently it was found that the filed documents were false and inaccurate in respect to material particulars (knowing it to be false) submitted to the Registrar. State the penal provision under the Companies Act, 2013 ?

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(c) ABC Bank of India, a nationalized bank, acquired on 1st January, 2007 a building, fully occupied by various tenants, from 'Y' the owner of the building in discharge of a term loan advanced to 'Y' who had mortgaged the said building as security with the said Bank and failed to repay the loan. The bank wants to keep the building permanently with it and earn the rent from tenants.

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Explain with reference to the provisions of the Banking Regulation Act, 1949 whether the said bank can do so.

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4. (a) (i) Damage Ltd, the Company wanted to suspend Mr. Z, the CFO of the Company during the pendency of an investigation being conducted under the provisions of the Companies Act, 2013 on the order of Tribunal. The Company approached the Tribunal on 3rd January, 2017 for the proposed action. The Company on 15th February, 2017 passed an order of suspension without waiting for the orders from Tribunal. Comment upon the action taken by the Company with reference to the relevant provisions of the Act. **8**
- (ii) During investigations conducted on the affairs of a company in the public interest, the inspector observed that the Directors of the company had been acting on the instructions of the holding company and he proceeded to investigate the holding company. Is Inspector permitted to do under the provisions of the Companies Act, 2013 ?
- (b) (i) Surya, a director in New Age Limited holding Directors Identification Number (DIN) wants to make certain changes in the particulars of his DIN. What procedure would you follow to get changes incorporated in the DIN already allotted to Surya ? **4**

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- (ii) Vijay, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar of Companies (RoC) within the prescribed time.

What would be the status of Vijay if the company fails to intimate about the resignation of Vijay to RoC ?

- (c) Sohan Lal, a farmer, was found involved in embezzlement of opium cultivated by him. State the punishment that can be awarded to him under the Prevention of Money Laundering Act, 2002. **4**

5. (a) (i) 17th Board meeting of Jai Entertainment Ltd. was held at its registered office situated at B-17, Industrial Area, Suncity. While discussing the matter of appointment of Mr. Kaabil as Managing Director of the company, certain defamatory remarks were made by Mr. X, one of the directors. The draft minutes submitted by the Company Secretary also incorporated the indecent remarks of Mr. X. The chairman wants to remove those undesirable remarks from the minutes. Can he do so ? **8**

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- (ii) Draft the minutes of above referred meeting containing the matter regarding appointment of Managing Director in addition to the usual items.

- (b) ResLab Ltd. with an object to expand its production capacity, offered a public issue of ₹ 200 crore to the public which was fully subscribed. Out of the said amount, a sum of ₹ 170 crore was spent in project "A" and the balance of ₹ 30 crore earlier envisaged for buying a machinery could not be materialized and as such the said amount of ₹ 30 crore remained unutilized. In the mean while a team of consultants suggested the company to go for establishing Research Labs at different part of the country which would be more beneficial to the company.

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The Chairman of the company approach you to advise the company as to whether the un-utilized amount of ₹ 30 crore collected from Public Issue can be diverted in the manner as suggested by the consultants with reference to the provision of the Companies Act or SEBI Act.

- (c) There are several provisions under the Companies Act, 2013 which start with the words 'notwithstanding' and 'without prejudice'. Explain the nature and significance thereof, applying the principles of Statutory Interpretation.

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6. (a) Examine the following with reference to the provisions of the **8**

Companies Act, 2013 :

- (i) Mr. Narayan, a Director of KPR Limited who is proceeding on a long foreign tour, appointed Mr. Shankar as an alternate director to act for him during his absence. The Articles of the company provide for appointment of alternate directors. Mr. Narayan claims that he has a right to appoint an alternate director.
- (ii) The Board of Directors of Sakthi Limited decides to appoint on its Board, Mr. Ravi as a nominee director upon the request of a bank which has extended a long term financial assistance to the company. The Articles of Association of the company do not confer upon the Board any such power. Also, there is no formal agreement between the company and the bank for any such nomination.
- (iii) The Chairman of Evergreen Limited convened a board meeting and two weeks' notice was served on all directors of the company. Two of the independent directors on the board objected on the grounds that no proper agenda for the meeting was circulated.
- (iv) Sunshine Limited proposes to hold its board meeting at a shorter notice through video conferencing.

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(b) Shoki Internl Ltd. has a network of six branches scattered all over the world out of which two are in India. The net-worth of the company is ₹ 650 crores. Since the net profits of the company were in downward trends, Mr. Nikunj a retired General Manager of a Bank was appointed by the company to analyse the financial health of the company. Among the other points having been reported by Mr. Nikunj, the CEO of the company seeks your advice, particularly on the application of the provisions of CSR under the Companies Act, 2013, based on the following :

- (i) The Net profit of the company in the financial year 2012-13 was ₹ 18 crore which was contributed by the branches located in India and outside in the ratio of 35 : 65.
- (ii) Since 2013-14 onwards, all the branches located in India have not earned any profit.
- (iii) The Financial Statements for the year 2015-16 revealed that there was net profit of ₹ 7 crore to the company and the total expenses on travelling abroad were ₹ 2.5 crore.
- (iv) The company has borrowed loan at a very high rate of interest which needs to be swapped with low financing cost.

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(v) During the year 2016-17, the company has so far spent CSR expenses to the tune of 1.10 percent of the average net profits of the company made during the three preceding immediately financial years which in his view need special attention.

(c) Explain the meaning of the following terms used in the Securities Contracts (Regulation) Act, 1956 : **4**

(i) Option in Securities

(ii) Spot delivery contract

7. Answer any **four** of the following : **4×4
=16**

(a) Some applicants consented to become shareholders of a company on the condition that their suggestions should be included in the memorandum and articles of association. Their suggestions, however, were not carried out by the promoters but the applicants signed usual applications for shares allotted to them and thereby become shareholders of the company. The company went into liquidation.

(i) What shall be the fate of the applicants who had consented to become shareholders on certain conditions ?

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- (ii) What shall be the amount to be borne by the secured creditors out of the expenses incurred by the liquidator if :
- (a) The value of the security of secured creditors of a company is ₹ 1.00 lac.
 - (b) Total amount of workmen's due is ₹ 1.00 lac and
 - (c) Debts due from the company to its secured creditors is ₹ 3.00 lacs.
 - (d) The liquidators incurred ₹ 10000 for the preservations of the security before it is realized by the secured creditors.

- (b) Mr. D was appointed as a Technical Member of the National Company Law Tribunal (NCLT) on 1st July, 2012 for a period of 5 years. He will be completing 62 years on 30th June, 2017.

Whether he can be re-appointed on the NCLT on completion of his tenure in 2017 ?

- (c) A group of shareholders holding 20% of the issued share capital of DEF Limited have filed a petition before the Tribunal alleging the following :
- (i) Various acts of illegal, invalid and irregular transactions entered into the name of the company.

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- (ii) Losses incurred due to mismanagement by the board of directors.
- (iii) Non-declaration of dividend despite having sufficient profits in the past years.

Examine the merits of the above petitions made under Section 241 of the Companies Act, 2013 in the light of the judicial pronouncements made in this regard.

- (d) The shareholders and creditors of Superfine Limited, in a meeting convened for approval of a scheme of reconstruction of the company, passed resolutions. The scheme of reconstruction provided for the following :

- (i) Sale of plant and machineries and appropriation of proceeds for payment of outstanding wages, tax dues and repayment of loan.
- (ii) Unsecured creditors to forego 60% of their claims against the company and receive debentures for the balance amount. A few shareholders and creditors raised objections against the said arrangements.

Advise the directors about the steps to be taken to give effect to the proposed scheme under the Companies Act, 1956.

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- (e) Popular Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The bank issued notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified.

Explain the measures to be taken by the Bank to enforce its security interest under the said Act.

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