

Roll No.

Total No. of Questions – 6

Total No. of Printed Pages – 15

Maximum Marks – 70

5/11/2022
5:13 PM

GENERAL INSTRUCTIONS TO CANDIDATES

1. The question paper comprises two parts, Part I and Part II.
2. Part I comprises Multiple Choice Questions (MCQs).
3. Part II comprises questions which require descriptive type answers.
4. Ensure that you receive the question paper relating to both the parts. If you have not received both, bring it to the notice of the invigilator.
5. Answers to MCQs in Part I are to be marked on the OMR answer sheet as given on the cover page of descriptive answer book only. Answers to questions in Part II are to be written in the same descriptive answer book. Answers to MCQs, if written inside the descriptive answer book, will not be evaluated.
6. OMR answer sheet given on the cover page of descriptive answer book will be in English only for all candidates, including for Hindi medium candidates.
7. **The bar coded sticker provided in the attendance register, is to be affixed only on the descriptive answer book.**
8. You will be allowed to leave the examination hall only after the conclusion of the exam. If you have completed the paper before time, remain in your seat till the conclusion of the exam.
9. Duration of the examination is 3 hours. You will be required to submit (a) Part I of the question paper containing MCQs, and (b) the answer book in respect of descriptive answer book with OMR cover page to the invigilator before leaving the exam hall, after the conclusion of the exam.
10. The invigilator will give you acknowledgement on Page 2 of the admit card, upon receipt of the above-mentioned items.
11. Candidate found copying or receiving or giving any help or defying instructions of the invigilators will be expelled from the examination and will also be liable for further punitive action.

PART – II

70 Marks

1. Question paper comprises 6 questions. Answer Question No. 1 which is compulsory and any 4 out of the remaining 5 questions.
2. Working notes should form part of the answer.
3. Answers to the questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate has not opted for Hindi Medium, his/her answers in Hindi will not be evaluated.

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PART – II

1. (a) TY Limited has borrowed a sum of ₹ 25,00,000 from its director 4

Mr. Tanmay. The company fails to obtain prior approval of Audit Committee constituted under the provisions of Section 177 of the Companies Act, 2013 (the Act). Auditors of the company expressed the view that the approval of Audit Committee was mandatory being a related party transaction. However, the Company Secretary submitted his comment that since this transaction is not covered under the related party transaction as per Section 188 of the Act, approval of Audit Committee was not required and hence, the company has not committed any violation of the provisions of the Act. Referring to the provisions of the Companies Act, 2013, examine:

- (i) Whether omnibus approval of Audit Committee was needed to the borrowings, if the transaction was not a related party transaction under Section 188 of the Act ?
- (ii) Can a post transaction approval of Audit Committee be obtained for related party transaction and if not done so, what will be the effect on the transaction ?

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- (b) APC Limited has held four board meetings during a period of twelve months. All board meetings were held at the registered office of the company situated at Chennai. Mr. Prakash, the non-executive, non-independent director, has not attended any board meeting in person but attended only one meeting through audio-video means. 4

Mr. Akash was appointed an independent director of the company on 31st August, 2022 and as required, obtained the Director Identification Number (DIN) immediately on the next day and attended all board meetings held after his appointment. Referring to the provisions of the Companies Act, 2013 examine the following issues arising out of the above scenarios :

- (i) Vacation of office of director of Mr. Prakash, if he has not attended any board meeting in person.
- (ii) Validity of attending the board meetings by Mr. Akash in his capacity of a director.

- (c) Mary Limited is a company listed on National Stock Exchange. The company's Articles empower the Board of directors to appoint additional directors. Accordingly, the Board of directors appointed Mr. Kamlesh as an additional director. It may, however, be pointed out that earlier, the proposal to appoint Mr. Kamlesh as a director on the company's Board was rejected by the members of the company at an Annual General Meeting. 6

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Examining the provisions of the Companies Act, 2013, answer the following questions:

- (i) Whether Mr. Kamlesh's appointment as an additional director by the Board of director is valid ?
- (ii) Can members exercise the power of appointing Mr. Kamlesh as an additional director at the Annual General Meeting (AGM) when the proposal to appoint comes before the AGM for the first time ?
- (iii) In case the company's Annual General Meeting is not held within the stipulated time and adjourned to a later date, decide whether Mr. Kamlesh, who was appointed validly by the Board as additional director for the first time, can continue to act as a director.

2. (a) Mr. Sunil is the Legal Manger in Sonata Limited, Sonata Limited is under investigation for alleged falsification of accounts. During investigation Mr. Sunil disclosed some confidential information to the investigating officer. Now the company wants to suspend Mr. Sunil from his services. What is the remedy available to Mr. Sunil? What procedure should be adopted by Sonata Limited to implement its decision to suspend Mr. Sunil ? Explain with the provisions of the Companies Act, 2013.

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- (b) On direction of the National Company Law Tribunal a meeting is held 4
to adopt the scheme of compromise between DTC Limited and its
10,000 creditors representing in value of ₹ 100 crore. The Chairman
of the meeting declared the voting details, as below:

(1) Total votes casted in favour of the scheme:

In person	2,000 creditors representing in value ₹ 35 crore
By proxy	1,000 creditors representing in value ₹15 crore
By postal ballot	2,000 creditors representing in value ₹ 20 crore

(2) Total votes casted against the scheme:

In person	3,000 creditors representing in value ₹ 5 crore
By proxy	1,000 creditors representing in value ₹ 15 crore

- (3) Total 1,000 creditors representing in value ₹10 crore did not attend the meeting.**

Referring to the provisions of the Companies Act, 2013 analyse,
whether the scheme of compromise has been adopted by the meeting
and its binding effect on the dissenting and absent creditors.

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(c) ADL Limited is eligible for External Commercial Borrowing (ECB). 3

It raised ECB of INR 100 crore on 01.01.2021 from eligible foreign lender to establish a power plant in India. As the forest and other government clearances are getting delayed, the implementation of the project is likely to be deferred by one year. Hence, the company dropped down the ECB amount of INR 100 crore and parked the proceeds, as detailed below:

- (i) INR 80 crore were parked in capital market, the break-up of which is that- INR 20 crore in equity shares, INR 40 crore in secured debentures and INR 20 crore in mutual funds.
- (ii) INR 20 crore in term deposits with AD Category I bank in compliance with all conditions.

Referring to the provisions of the Foreign Exchange Management Act, 1999, examine the validity of the parking of ECB proceeds in the manner as detailed above.

(d) A Flying Club in Indore, India was established in the year 2016. The principal activity of the club is to impart class room and field training to the aspiring pilots. After running smoothly for first five years the club became defunct. With the initiative and support of the Government it could be revived during the year 2021. To restart the training activity the club exported two aircraft engines and spare parts for repairs abroad and getting them back to India within six months for functioning of the club activities. 3

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The club had with it one imported aircraft on lease basis which was also re-exported abroad permanently by cancelling the lease agreement and obtaining the requisite approvals / permissions of the government agencies. However, the club failed to furnish declaration to the Reserve Bank of India and other authorities with respect to this export. Referring to the provisions of the Foreign Exchange Management Act, 1999 analyse whether the club has contravened the provisions of the Act relating to export and re-export of the said goods.

3. (a) Ganga Textiles Limited incurred huge losses during the last three financial years and its financial position was quite bad. The Company created a legal mortgage on some of its immovable properties in favour of a bank on August 21, 2021, in the hope that by keeping good faith with the bank, it could get further advances from the bank and the same could be utilized to revive the Company. Some creditors filed a winding-up petition in the Tribunal on January 15, 2022 and the Tribunal passed an order of winding-up on August 1, 2022.

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Referring to the relevant provisions of the Companies Act, 2013, explain whether the creation of a legal mortgage by the company in favour of the bank will amount to fraudulent preference.

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(b) CNC Limited is a foreign company having its places of business in Mumbai and Ahmedabad in India. It has amended its Memorandum of Association on 1st June, 2022 and closed branch office situated at Mumbai. Referring to the provisions of the Companies Act, 2013 advise the company on the following matters : 4

- (i) Compliance procedure as regards to amendment of Memorandum of Association.
- (ii) Compliance procedure as regards to closure of Mumbai office and discontinuing submission of documents to the Registrar of Companies afterwards.

(c) One NGO made a complaint before Special Court against Rishabh, alleged to be indulged into the money laundering activities. In the same complaint he has been accused of other offences under the Code of Criminal Procedure, 1973. 3

Referring to the provisions of the Prevention of Money Laundering Act, 2002, examine the following :

- (i) Can Special Court take cognizance of alleged offence complained of ?
- (ii) Can Police officer initiate investigation on receiving a Complaint ?
- (iii) Can Special Court initiate trial under the Code of Criminal Procedure, 1973 while trying an offence under this Act ?

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- (d) Mr. Wilson, a notorious person, was caught in possession of Counterfeit Currency Notes, an offence specified under Part A- Paragraph 1 of the Schedule of the Prevention of Money Laundering Act, 2002. State the Punishment that can be awarded to him under the above Act. Also identify the Punishment for the offence specified under Part A- Paragraph 2 of the Schedule of the Prevention of Money Laundering Act, 2002. 3
4. (a) Meera is a highly qualified professional and independent director in several listed companies. Referring to the provisions of the Securities and Exchange Board of India Act, 1992 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, answer the following questions : 4
- (i) In how many listed companies she can be appointed as a director and independent director ?
- (ii) Whether the above number will be changed if she is serving as a whole-time director in a listed entity ?
- (iii) In how many committees she can be member ?
- (iv) In how many committees she can be appointed as Chairperson ?

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(b) The Central Government has issued directions on the question of policy from time-to-time to the Securities and Exchange Board of India (SEBI / Board). However, SEBI defied the orders on many occasions and hence, the Central Government superseded the Board. Referring to the provisions of the Securities and Exchange Board of India Act, 1992 analyse the validity of the order of the Central Government and answer the following: 4

(i) The powers of the Central Government to supersede the Board and reasons therefor.

(ii) Eligibility of person/s who vacated their office on supersession of the Board for appointment on the reconstituted board.

(c) Mr. Mustafa is contesting an election as an authorised candidate of a registered political party. He has received, during the financial year 2021-22, a contribution of INR 25,00,000 from his brother Mr. Rehman who is a citizen of and living in UAE. Mr. Mustafa has obtained this money to defray his election expenditure. Referring to the provisions of the Foreign Contribution (Regulation) Act, 2010 (FERA) advise whether Mr. Mustafa, by accepting foreign contribution, has violated the provisions of FERA. 3

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- (d) There was some dispute between Mr. Pankaj and Mr. Arun which could not be resolved smoothly by them and was referred to the arbitral tribunal having three arbitrators, by virtue of the arbitration agreement between them. Two of the arbitrators were of the opinion that Mr. Pankaj has to pay a compensation of ₹ 2 crore to Mr. Arun. The third arbitrator was of the opinion that Mr. Arun is not eligible to get any compensation from Mr. Pankaj. The award was then written and signed by the first two arbitrators, while the third arbitrator refused to sign. The fact that the third arbitrator refused to sign and the reason behind that was stated in the award. Mr. Pankaj contended that since all the arbitrators did not sign, the award is invalid. Decide whether the contention of Mr. Pankaj is tenable as per the provisions of the Arbitration and Conciliation Act, 1996. 3

5. (a) Sujeet, a registered valuer, was appointed by Him Limited for valuation of its goodwill for the proposed joint venture with its suppliers. A sum of ₹ five lakh was given to him towards remuneration. Later, it was found that Sujeet had given lower valuation intentionally to defraud the company which caused a loss of ₹ one crore to the company. As per the Companies (Registered Valuers and Valuation) Rules, 2017 state the remedies available to Him Limited and also mention the consequences to be faced by Sujeet for the default. 4

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(b) Mr. Sohel and Sushil, joint shareholders of Pragati (Nidhi) Limited 4
have applied for a fresh loan whereas other member Mr. Sahil has
applied for a further loan who has defaulted the repayment of earlier
loan borrowed from the Nidhi. The name of Mr. Sohel appears first in
the register of members. The latest audited financial statements of the
Nidhi as on 31st March, 2022 show that the total amount of deposits
from its members is ₹ 5 crore. The financial statements further show
that the Nidhi is continuously in losses during the last three financial
years 2019-20, 2020-21 and 2021-22. You are required to decide the
eligibility and maximum quantum of loan that can be sanctioned to
Mr. Sohel and Mr. Sahil as per the provisions of the Companies Act,
2013.

(c) (i) Star Bank of India Ltd. (SBI) has provided a loan of ₹ 50 Lakh to 6
SMALL Private Limited which is a small company under the
Companies Act, 2013. The Company defaulted the repayment as
a result of which SBI wants to initiate the Corporate Insolvency
Resolution Process (CIRP) against the company to settle the
matter within a period of three months approximately. The
Solicitor advised the Bank that the maximum period allowed for
completion of CIRP is 270 days. Referring to the provisions of
the Insolvency and Bankruptcy Code, 2016 advise the Bank the
measures available, if any, for speedy disposal of the process as
desired by it.

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(ii) Harsha Fabrics Private Limited (Corporate Debtor) has taken a loan of ₹ 30 Lakh from a financial institution (Financial Creditor) for business purpose. On filing an application by the financial creditor, the Corporate Insolvency Resolution Process (CIRP) was commenced declaring moratorium by order of the Adjudicating Authority on 30th May, 2022. The High Court having jurisdiction, in disposing of the pending petition of some other creditors which was filed prior to 30th May, 2022, passed an order for auction of assets of the Corporate Debtor on 6th June, 2022.

Referring to the provisions of the Insolvency and Bankruptcy Code, 2016 advise the financial creditor whether the order of High Court is valid and can it be challenged ?

6. (a) Mr. Ramesh was appointed as a whole-time director and was heading the marketing department in Sun Moon Pharma Limited. As a cost saving measure during pandemic he was removed from the office as whole-time director. Mr. Ramesh demanded compensation for loss of office. Explaining the relevant provisions of the Companies Act, 2013, state whether he is entitled to compensation. If yes, how the compensation amount will be calculated ? 4

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Ms. Vishakha who is working as a Managing Director in MNO Limited has received an offer from Vishal Steel Limited for the post of the Managing Director. Effective capitals of MNO Limited and Vishal Steel Limited are ₹ 10 Crore and ₹ 20 Crore respectively as per the latest audited financial statements. While accepting the offer of Vishal Steel Limited she put a condition that she will work as a managing director in both companies simultaneously and draw remuneration from each of them. Referring to the provisions of the Companies Act, 2013 advise her about the total maximum yearly remuneration she can draw from both the companies together, if entitled ?

(b) Modern Limited wants to borrow from banks an amount more than its paid-up share capital, free reserves and share premium. As per general rule of governance the companies are governed by directors. Whether the Board of directors is authorised to do so ? If not, what would be the procedure to be followed by the company? Whether your answer would be different if total loans include temporary loans obtained from its banker in ordinary course of business ?

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(c) During the proceedings before Adjudicating authority under the Prevention of Money Laundering Act, 2002 a notice to attach the property (a car) was issued to Shyam. Shyam pleaded that his car was not used in the money laundering activities. Whether his plea can be accepted and the said notice be quashed under the said act ? Explain.

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- (d) Explain the duties of Resolution Professional before initiation of pre-packaged insolvency resolution process as per the Insolvency and Bankruptcy Code, 2016. **3**
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