MAY 2010

FINAL (NEW COURSE)
GROUP-I PAPER-4
CORPORATE AND
ALLIED LAWS

Roll No..............................

Total No. of Questions—12] [Total No. of Printed Pages—6

Time Allowed—3 Hours Maximum Marks—100

UTI

Answers 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, answers in Hindi, his answers in Hindi will not be valued.

Answer **all** questions.

Marks

SECTION—A

1. (a) Mr. Sachin was appointed as an additional Director of Conservative Finance Ltd. w.e.f. 1st October, 2009, in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next annual general meeting of the company was due on 31st March, 2010, but the same was not held due to delay in the finalisation of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr. Sachin and his continuation as additional director beyond 31st March, 2010. Advise the company on the complaints made by the shareholders. 5

(b) Mewar Instrumentations Limited is a subsidiary of a Government company. The comptroller and Auditor General of India appointed Sobman & Company to conduct a supplementary audit of Mewar Instrumentations Limited. Discuss, under the provisions of the Companies Act, 1956 whether the Comptroller and Auditor General's power to authorise such audit for the said subsidiary company is in order ? 5

Marks

2. (a) Mr. Ramesh and his supporters hold more than 50% of the equity share capital of Progressive Realtors Ltd. Dissatisfied with the performance of the company, Mr. Ramesh sends a notice to the Board of Directors about his intention to inspect the account books of the company. Explain the provisions of the Companies Act, 1956 regarding the persons who can inspect the books of account and the right of Mr. Ramesh in this matter. 5

(b) X & Co. Ltd. made a loss of Rs. 20 lakhs after providing for depreciation for the year ended 31st March, 2009 and as a result the company was not in a position to declare any dividend for the said year out of profits. However, the Board of Directors of the company announced the declaration of dividend of 15% on the equity shares payable out of free reserves. The paid up share capital of the company and its free reserves as on 31st March, 2009 are Rs. Two crores and Ten crores respectively. The average dividend declared by the Company in the last five years is 25%. Examine the validity of declaration of dividend. 5

3. (a) Ambitions Engineering Consultants Ltd., whose financial year ends on 31st March, has acquired Struggling Techies Ltd. making it a subsidiary company. The financial year of the subsidiary company ends on 30th June. The management of the holding company wants to change the financial year of the subsidiary company, if possible, so as to coincide with the financial year of the holding company. State the relevant provisions of the Companies Act, 1956 regarding the financial year and the maximum period upto which the accounts can be prepared in a Financial Year and the approvals, if any, required to be taken to accomplish this task. 5

(b) Ganesh Textiles Private Limited has discontinued its Business since 2006. Negligible assets are available with the company, but also some liabilities. The company has been regular in filing Annual Returns and Balance Sheets. The Director of the Company propose to apply to the Registrar of Companies for striking the name of the company on the ground that it is a defunct company. 5

Advise, as to what steps can be taken to get the name of the company struck off under the provisions of the Companies Act, 1956.

Marks

4. (a) Mr. Mutthu Swami is working as Chief Accountant is Eastern Pharmaceuticals Ltd. The Board of Director of the said company propose to charge him with the duty of ensuring compliance with the provisions of the Companies Act, 1956 so that accounts and Balance Sheet and Profit and Loss account can be maintained and prepared in accordance with the provisions of law for the time being in force. Draft a "Board Resolution" for the said purpose. Also point out the consequences in case of default, when such resolution is passed. 5

(b) Mr. Ravindranathan is holding the post of Director in three companies out of which Goodluck Colours Limited is one. For the financial year ended on 31st March, 2009, Goodluck Colours Limited failed to pay interest on loans taken from a financial institution and also failed to repay the matured deposits. On 1st June, 2009 Mr. Ravindranathan accepting the post of Additional Director in Soma Footwear Limited, submitted a declaration that the disqualification specified in Section 274 of the Companies Act, 1956 is not applicable in his case. Decide whether the declaration submitted by Mr. Ravindranathan to Soma Footwear Limited is in order. 5

5. (a) A scheme of reconstruction of Southern Stone Company Limited was approved by its shareholders and creditors in their meeting and resolutions to that effect were passed. Afterwards a few shareholders and creditors of the company raised objections against the said arrangements of reconstruction. The entire paid up capital of the company was wiped out by the accumulated losses. Advise the Directors of the said company about the steps to be taken to give effect to the proposed scheme under the Companies Act, 1956. 5

(b) Mr. X is an unsecured creditor and has to recover a sum of Rs. 7 lakhs from Global Footwear Company Limited. The said company has become financially insolvent and hence unable to pay its debts. With the object of recovery of the said amount Mr. X is willing to proceed for compulsory winding up of the company. Advise the steps and procedure in this relation under the provisions of the Companies Act, 1956. 5

Marks

6. (a) ABC Limited, over years, enjoys high reputation and its General Reserve is many times more than the paid up capital of the Company. There is apprehension of cornering the shares of the company by some persons likely to result in change in the Board of Directors which may be prejudicial to the Public interest. 5

Advise, as to how can ABC Limited block the transfer of shares of the company under the provisions of the Companies Act, 1956.

(b) The Articles of Association of Rajasthan Toys Private Limited provide that the maximum number of Directors in the company shall be 10. Presently, the company is having 8 Directors. The Board of Directors of the said company desire to increase the number of Directors to 15. Advise whether under the provisions of the Companies Act, 1956 the Board of Directors can do so. 5

7. (a) Advise the Board of Director of Spectra Papers Limited regarding validity and extent of their powers, under the provisions of the Companies Act, 1956 in relation to the following matters : 5

(i) Buy-back of the shares of the Company, for the first time, upto 10% of the paid up equity share capital without passing a special resolution.

(ii) Delegation of Power to the Managing Director of the company to invest surplus funds of the company in the shares of some companies.

(b) Non-executive Directors of ABC Limited, who are neither in the whole time employment of the company nor Managing Directors have been given the following remuneration — 5

(i) Guarantee Commission has been paid to them for having guaranteed the term loans obtained from a Financial institution.

(ii) Commission payable to them is calculated on the basis of book-profits arrived at after providing for depreciation as per straight line method,

Examine the validity of these payments in the light of the provisions of the Companies Act, 1956.

Marks

SECTION—B

8. A to Z Ltd. an unlisted public company, eligible to make a public issue, desires to get its securities listed on Mumbai Stock Exchange, pursuant to a public issue to be made shortly. The company seeks your advice in respect of the following : 6

(a) Whether the company can freely price its equity shares; and

(b) Whether it can issue equity shares to those applicants in the firm allotment category at a price different from the price at which equity shares are offered to the public.

Advise, keeping in view the SEBI guidelines in this regard.

9. (i) The Reserve Bank of India issued certain directions to Dream Construction Limited, an authorised person under the Foreign Exchange Management Act, 1999 to file certain returns. The Company failed to file the said returns. Decide, as to what penal provisions are applicable against the said authorised person under the said Act. 3

(ii) Examine under the Foreign Exchange Management Act, 1999 whether "Payment of remuneration to foreign technicians" is a permissible transaction under the provisions of the said Act. 3

10. P Ltd. and Q Ltd. both dealing in chemicals and fertilizers have entered into an agreement to jointly promote the sale of their products. A complaint has been received by the Competition Commission of India (CCI) starting that the agreement between the two is anti-competitive and against the interests of others in the trade. Examine with reference to the Provisions of the Competition Act, 2002, what are factors the CCI will take into account to determine whether the agreement in question will have any appreciable adverse effect on competition in the market. 6

Marks

11. Mr. Gopal is a director in a Bank. The Reserve Bank of India terminates him on the ground that his conduct is deterimental to the interest of the depositors. Decide, whether the Reserve Bank of India can do so under the Banking Regulation Act, 1949. Can the Reserve Bank of India appoint Additional Director in a Bank under the said Act ? 6

12. Gaurav Textile Company Limited has entered into a contract with a Company. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so ? 6

NOV 2010

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Maximum Marks : **100**

HCL

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Question No. **1** is compulsory.

Answer any **five** questions from the remaining **six** questions.

Marks

1. (a) X, who does not hold any shares in his name is appointed as Director in JAM Company on 1st April, 2010. His wife holds 10,000 Equity Shares in the company in her name singly. Certain members of the company objects to X' appointment on the ground that since he does not hold any shares in his own name, his appointment is violative of the provisions of the Companies' Act, 1956. Articles of the Company are silent on the issue of holding any shares by a Director. **5**

   Examine the provisions of the Act and decide

   (i) Whether contention of the members is tenable ?

   (ii) Whether X wife's shareholding in the company can be the ground for 'X' continuation as a director in the company ?

   (iii) What would be your answer in case 'X' is one of the subscriber of the Memorandum of Association ?

   (b) A is the Director of M & Co. Ltd. A has borrowed ₹ 50/- lacs on reasonable terms from X for company's benefit and business. A has no power to borrow. What will be the legal position ? Please explain. **5**

Marks

(c) The Central Govt. has formed its opinion on certain grounds that the recognition granted to a Stock-Exchange be withdrawn. Examining the provisions of the Securities (Contracts) Regulation Act, 1956, explain the procedure that must be followed by the Central Govt. to give effect to the above. Also state whether any such withdrawal of recognition shall affect the validity of the contracts already entered into by Stock-Exchange, before withdrawal of recognition. **5**

(d) A is the Auditor of B and Co. Ltd. Board of Directors decided to remove A on certain grounds. Please indicate what procedure is to be followed to remove A ? Advise the Board. **5**

2. (a) Certain Members of MDV Company Limited having share capital feel that the affairs of the company are being mismanaged by Directors. Members therefore, decide to move the Company Law Board, complaining the mismanagement of company affairs by Directors of the Company. Examine the provisions of the Companies' Act, 1956 and state **8**

(i) Whether members are entitled to complain the Company Law Board.

(ii) Whether the following acts of the Board of Directors amount to mismanagement :

(A) Continuation of Directors in their office after expiry of their tenure and infighting continues among them.

(B) Non-declaration of dividend when it does not lead to devaluation of shares.

Marks

(b) XYZ Ltd. while preparing the Balance Sheet and Profit and Loss Account for the financial year ended 31st March, 2010 did not comply with the Accounting Standards. State the consequences that follow in case of Non-compliance. 8

3. (a) X, a Director of MJV Ltd., was appointed on 1st April, 2009, one of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule XIII. For the financial year ended 31st March, 2010, the company suffered heavy losses. The company was not in a position to pay any remuneration but he was paid ₹ 50 lacs for the year, as paid to other directors. The effective capital of the company is ₹ 150 crores. Referring to the provisions of Companies' Act, 1956, as contained in Schedule XIII, examine the validity of the above payment of remuneration to X. 8

(b) Under the provisions of the Companies' Act, 1956, examine the validity of the following appointments made by Board of VMR Ltd. 8

(i) ABC Ltd. is a subsidiary company of VMR Ltd. in which Y is a Director. Y has been appointed as Manager – Research & Development in V.M.R. Ltd. on a monthly salary of ₹ 2 lacs per month with effect from 1st April, 2010.

(ii) What would be your answer in case VMR Ltd. is a subsidiary of ABC Ltd. ?

Marks

4. (a) In ABC Ltd. three Directors were to be appointed. The item was included in agenda for the Annual General Meeting scheduled on 30th September, 2010, under the category of 'Ordinary Business'. All the three persons as proposed by the Board of Directors were elected as Directors of the company by passing a 'single resolution' avoiding the repetition (multiplicity) of resolution. After the three directors joined the Board, certain members objected to their appointment and the resolution. Examine the provisions of Companies' Act, 1956 and decide **8**

(i) Whether the contention of the members shall be tenable and whether both the appointment of Directors and the 'single resolution' passed at the Company's Annual General Meeting shall be void.

(ii) What would be your answer in case the company in question is an "Association not for Profit" incorporated under Section 25 of the Companies' Act, 1956.

(b) In relation to winding up of a company incorporated under the Companies' Act 1956; explain clearly the meaning of the term 'overriding preferential payments'. Examine the provisions of the Companies' Act and decide whether the following debts of a company under the winding up shall be 'Preferential payments' and shall be paid in priority to the claim of unsecured creditors : **8**

(a) Wages amounting to ₹ 30,000/- (Rupees Thirty thousand) only of an employee for services rendered for a period of 8 months within the preceding 12 months next before the relevant date.

(b) ₹ 1 lac due to an employee from Provident Fund and ₹ 50,000/- towards gratuity.

(c) ₹ 20,000/- payable by the company on account of expenses incurred in respect of investigation held under Section 235 of the Companies' Act, 1956.

5. (a) As required under the provisions of the Companies' Act, 1956, as amended in 2000, a company incorporated under the Act has to include in the Report of Board of Directors a 'Directors Responsibility Statement'. Directors of the company seek your advise about the matters to be included in the statement. Advise. **8**

(b) ABC Company Ltd. an unlisted company, decided to offer Equity Shares through Initial Public issue. Under the provisions of SEBI Act, 1992, the company is required to file draft prospectus and other documents with SEBI and get the documents registered with the Registrar of Companies. Board of Directors of the company seek your advice about the conditions to be complied for the initial public offer (I.P.O.). You being a practising Chartered Accountant, advise the Board. **8**

6. (a) The Board of Directors of VDV Ltd., a banking company incorporated in India, for the accounting year ended 31-3-2010 transferred 15% of its net profit to its Reserve Fund. Certain shareholders of the company objects to the above Act of the Board of Directors on the ground that it is violative of the provisions of the Banking Regulation Act, 1949. Examine the provision of Banking Act and decide : **8**

(i) Whether contention of the Shareholders is tenable.

(ii) Would your answer be still the same in case the Board of Directors transfer 30% of the company's net profits to Reserve Fund.

Marks

(b) The Board of Directors of DJA Ltd. seek your advice about the procedure to be followed for 'Electronic filing and Authentication of Documents' with the Registrar of Companies, Mumbai. Advise the Board about the procedure to be followed in this regard and explain the manner in which the 'E' filing is regulated by the Central Govt. **8**

7. Attempt any **four** :

(a) Examine the provisions of Foreign Exchange Management Act, 2002 and advise whether the approval of Central Govt. is needed in the following cases : **4**

(i) X wants to remit certain sum of money out of lottery winnings.

(ii) Payment of Royalty in case it is 10% of local sales and 20% of exports and the lump sum payment of U.S. $ 3 millions.

(b) What are the agreements prohibited under Section 3(1) of the Competition Act, 2002 ? **4**

(c) Under provisions of Companies' Act, 1956, relating to producer company, examine whether the office of director of such company shall fall vacant in the following circumstances : **4**

(i) X a Director of ABC Ltd., a producer company has made a default in payment of loan taken from a company and default continues for 60 days.

(ii) Z a Director of the above company could not call the Annual General Meeting for the company due to some natural calamity occurred three days before the Schedule date.

Marks

(d) Explain the Rule of "Reasonable construction under the interpretation of Statute, Deeds etc". 4

(e) Explain Asset Reconstruction, Financial Assets under the Securitization and Reconstruction of Financial Assets Enforcement of Security and Interest Act 2002. 4

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RPG

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Question No. 1 is compulsory.

Attempt any **five** questions from the remaining **six** questions.

Marks

1. (a) The agenda for the meeting of the Board of Directors of M/s. Brilliant Enterprises Ltd. held on 20-3-2011 for adopting the annual accounts for the year ended 31-12-2010 included an item relating to payment of dividend. At the meeting it became apparent that the profits made during the year ended 31-12-2010 were inadequate to declare dividend. The Board was keen to maintain the rate of 20% dividend on the equity shares as declared in the previous years so as to maintain the image of the company. The company has some accumulated profits earned in previous years, which were transferred to reserves. Advise the company as to how it should go about to achieve the objective to pay dividend at the rate of 20% on the equity shares. 5

Marks

(b) Evershine Ltd., whose financial year ended on 31st March, 2010 held its annual general meeting on 30th September, 2010. The meeting transacted all other businesses except the accounts as they were not ready and adjourned the meeting to 20th December, 2010 for consideration of accounts. The Registrar of Companies issued show cause notice for violation of section 210 of the Companies Act, 1956. Advise. 5

(c) M/s. Ganesham & Company is a member of recognized stock exchange. Nova Crafts Export Limited desires that shares of the company may be bought and sold by M/s. Ganesham & Company on their own as well as on behalf of the investors. 5

Advise M/s. Ganesham & Company whether they can do so under the provisions of the Securities Contracts (Regulation) Act, 1956.

(d) XYZ Ltd. was registered in the year 2005 under Companies Act, 1956. There are allegations that the three directors who manage the affairs of the company are siphoning the funds of the company. The company has not declared any dividends on the ground that company is incurring losses. Mr. A, who controls 51% of the share capital of the company sends a notice to the management that he will inspect the books of account to verify the allegations. Examine the right of Mr. A to carry out the inspection. State the persons who have the right to carry out the inspection under the Companies Act, 1956. 5

Marks

2. (a) The Balance Sheet of International Operators Ltd. as at 31-03-2011 disclose the following position : **8**

		₹ (in crores)
Share Capital	–	100
Reserves & Surplus	–	300
Secured Loans	–	150
Unsecured Loans	–	100
Current Liabilities	–	70

Mr. X, the Managing Director of the company approaches the Royal Bank for a secured loan of ₹ 600 crores to finance the new projects to be taken up shortly. The Bank seeks your advice whether it can grant the loan of ₹ 600 crores on the application of Mr. X. Advise the Royal Bank having regard to the provisions of the Companies Act, 1956.

(b) Define "contributory" in a winding up. Explain the liabilities of contributories as present and past members. **8**

3. (a) The members of both Sugam Synthetix Limited and Gaurav Textiles Limited approved the scheme of amalgamation by overwhelming majority. A reputed firm of Chartered Accountants fixed the exchange ratio. The scheme of amalgamation was submitted, as per procedure, for the sanction of the Court. During pendency of the matter a small group of members of one of the merging companies objected to the amalgamation on the ground that the exchange ratio was unfair. **8**

Decide whether the said objection is likely to be sustained. Would your answer be different if similar objection was raised by the Central Government ?

Marks

(b) Point out the circumstances where under the following powers may be exercised by the Securities and Exchange Board of India : **8**

(i) Prohibiting a company from issuing or publishing any document or advertisement soliciting money from public for the issue of securities.

(ii) Pass cease and desist order in relation to any listed company.

What remedies are available to the companies against such orders under the Securities and Exchange Board of India Act, 1992 ?

4. (a) The Central Government acquired a Banking Company. The scheme of acquisition, apart from other matters, provided for the quantum of compensation payable to the shareholders of acquired bank. Some shareholders are not satisfied with the amount of compensation fixed under the scheme of acquisition. **8**

Is there any remedy available to the shareholders under the provisions of the Banking Regulation Act, 1949 ?

(b) X Ltd. was registered in the year 2005 under the Companies Act, 1956. The management of the company decides to make donation to a recognized political party. Advise the management about the restrictions and the extent upto which such donation can be made under the said Act. Will it make any difference if X Ltd. was registered in the year 2009 ? **8**

Marks

5. (a) Explain what is meant by (i) Compoundable Offences and (ii) Non-Compoundable Offences. State the authorities who can compound the said offences. Indicate whether the following offences are compoundable or non-compoundable : **8**

(i) Failure to hold the annual general meeting of the company.

(ii) Failure to file copies of annual accounts with the Registrar of Companies.

(iii) Acceptance of deposits in excess of the prescribed limits and

(iv) Non-distribution of dividend to the members within the prescribed time.

(b) Explain when a Public Limited Company is necessarily required to appoint a Managing Director under the Companies Act, 1956. Draft a Board resolution for the appointment of Mr. Intelligent as the Managing Director of Smart Limited on a salary of ₹ 5 Lakhs per month along with other usual perquisites. **8**

6. (a) The Registrar of Companies, Mumbai filed a petition in the Bombay High Court for compulsory winding up of 'Constant Overtrading Ltd.' on the ground that a perusal of the Balance Sheet of the company as at 31-03-2009 revealed that its liabilities far exceeded the assets and consequently the company is unable to pay its debts. Examine with reference to the provisions of the Companies Act, 1956, the various factors the High Court will take into account before the company is ordered to be wound up compulsorily and whether there is any justification in the present case for the Court to order winding up of the company. **8**

Marks

(b) Annual general meeting of Hero Ltd. has been scheduled in compliance with the requirements of the Companies Act, 1956. In this connection, it has some directors who are rotational and out which some have been appointed long back, some have been appointed on the same day. 8

Decide in this connection,

(i) Which of the directors shall be retiring by rotation and be eligible for re-election ?

(ii) In case two directors were appointed on the same day, how would you decide their retirement by rotation ?

(iii) In case the meeting could not decide how the vacancies caused by retirement to be dealt with, what shall be consequences ?

(iv) What will be your answer, assuming that the matter could not be decided even at the adjourned meeting ?

7. Attempt any **four** :

(a) During the financial year 2010-11 Mr. Bhattacharyya resided in India for a period of 180 days and thereafter went abroad. On 1st April, 2011 Mr. Bhattacharyya came back to India as an employee of a business organization. Decide the residential status of Mr. Bhattacharyya during the financial year 2010-11 under the provisions of the Foreign Exchange Management Act, 1999. 4

(b) What are the provisions in the Insurance Act, 1938 regarding nomination by Life Insurance Policy holder ? Whether a minor can be a nominee in a Life Insurance Policy ? 4

Marks

(c) The Competition Commission of India has received a complaint that M/s. ABC company has been abusing its dominant position in the food processing industry. Explain briefly the factors that will be considered by the Commission to ascertain whether M/s. ABC company enjoys a dominant position in the industry. 4

(d) "Associate words should be understood in common sense manner." 4

Explain the statement in the light of rules of interpretation of statutes.

(e) RST Ltd. is a securitization and reconstruction company under SRFAESI Act, 2002. The certificate of registration granted to it was cancelled. State the authority which can cancel the registration and the right of RST Ltd. against such cancellation. 4

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QUE

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Question No. **1** is compulsory.

Attempt any **five** questions from the remaining **six** questions.

Marks

1. (a) The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam, Mr. Hyder (Directors) and Mr. Indersen (Managing Director). The company has also employed a full time Secretary. **5**

   The Profit and Loss Account and Balance Sheet of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 1956 ?

   (b) A complaint was received by the Central Government from some shareholders of a public company that a person had been appointed as the Managing Director of the company without seeking the approval of the Central Government when such approval was required. State as to what action can be taken by the Central Government under the Companies Act, 1956. Also examine the validity of the acts of the Managing Director, if the complaint is found true. **5**

Marks

(c) The Securities and Exchange Board of India, for the purpose of corporatisation and demutualisation of a recognised stock exchange issued an order that at least fifty one percent of its equity share capital shall be held, within twelve months, by the public other than share holders having trading rights. Decide whether the said order of the Securities and Exchange Board of India is valid under the provisions of the Securities Contracts (Regulation) Act, 1956 including the time limit of twelve months as stated in the order. **5**

(d) M/s. USA Industries Limited has constituted "Investor Education and Protection Fund" as required under the Companies Act, 1956 but so far no amounts have been deposited into the said account. Explain with reference to the above said enactment, the amounts payable to the credit of the said account and the period within which the amounts shall be paid. **5**

2. (a) A group of creditors of a company lodged a complaint with the Registrar of Companies alleging that the Directors of the company are engaged in falsification and destruction of account books and records of the company and urged the Registrar to seize the account books and records of the company. Discuss whether the Registrar can exercise such powers under the provisions of the Companies Act, 1956. **8**

(b) A public limited company created a mortgage over its property in respect of a loan given by the brother of one of the Directors of the company. This fact was known to all the Directors of the company but the interested Director neither disclosed his interest nor abstained from voting when the loan transaction was approved at the Board Meeting. Decide the validity of the said transaction under the provisions of the Companies Act, 1956. **8**

Marks

3. (a) Mr. White is working as Chief Accountant in M/s. White Metal Limited. The Board of Directors of the said company propose to charge him with the duty of ensuring compliance with the provisions of the Companies Act, 1956 so that books of account can be properly maintained and Balance Sheet and Profit and Loss Account can be prepared as per the provisions of law. **8**

Draft a "Board Resolution" for the said purpose. Also point out the consequences in case of default, when such a resolution is passed.

(b) What do you understand by "book-building" ? State the conditions whereunder an issuer may offer specified securities at different prices. **8**

4. (a) On 24th January 2010, the Board of Directors of M/s. Black Limited appointed Mr. Z as the company's Sole Selling Agent for a period of 5 years. At the first general meeting of the company, held after the Board Meeting, on 29th September 2010, the above appointment was disapproved. Referring to the provisions of the Companies Act, 1956 : **8**

(i) State the date from which the above appointment comes to an end.

(ii) What would be your answer in case a clause in the above appointment that "the appointment must be made by the company in General Meeting" was not inserted as a condition ?

(b) Various complaints have been made against the activities of a Co-operative Banking Company to the effect that if unchecked, the shareholders, depositors and others will suffer heavily and the complainants requested for the appointment of directors by Reserve Bank of India. Discuss whether the Reserve bank has any powers to inspect the records of the Co-operative Bank to ascertain the truth or otherwise in the complaints and to appoint directors in the Co-operative Bank under the Banking Regulation Act, 1949. 8

5. (a) M/s. Zebra Private Limited was incorporated in the year 2010 under the Companies Act, 1956 by 3 brothers, namely A, B and C. All the three were Promoter-directors named in the Articles of Association and subscribed for 100 shares each in the company through Memorandum of Association. Thereafter, from time to time, further shares were allotted in proportion of one-third to each of them and in due course the company started earning substantial profits. Due to greed of money, the two brothers, namely A and B joined hands together and assumed complete control of the company leaving their brother C in lurch. Both the brothers got further shares allotted to themselves, thereby their joint shareholding increased from 66% to 90%, while the shareholding of C got reduced from the erstwhile 33% to 10%. No notice of any Board Meeting was sent to C, who was sidelined and was also removed as a Director. 8

Aggrieved by the decisions taken by his two brothers at his back, C seeks your advice for taking out appropriate proceedings before the Court or Judicial authority of competent jurisdiction. Also suggest the nature of reliefs he may claim while filing his case.

(b) An Inter-state co-operative society was incorporated on 1st May 2011 as a Producer company under the provisions of the Companies Act, 1956. Advise the company in respect of the following proposals : 8

(i) The company decides to have 18 Directors on its Board after incorporation.

(ii) Transferability of shares and

(iii) Share capital and voting rights.

6. (a) State in the light of the provisions of the Companies Act, 1956, as to how the auditor will be appointed in the following cases : 8

(i) A company in which a nationalized bank is holding 30% of the subscribed capital.

(ii) A Government company, within the meaning of section 617 of the Companies Act, 1956.

(iii) A company in which office of auditor has become vacant on account of resignation by the auditor.

Marks

(b) M/s. Neemuch Pharma Limited is a company listed with Malhargarh Stock Exchange. Some small shareholders of the said company want to appoint Mr. Avadhesh as a Director as their representative on the Board of Directors of the said company. Mr Avadhesh is holding 1000 equity shares of ₹ 10 each in the said company. State the provisions of the Companies Act, 1956 in relation to the proposal to appoint Mr. Avadhesh as a Small Shareholders' Director. **8**

7. Attempt any **four** :

(a) The Central Government on the recommendation of selection committee appoints Mr. Ramesh aged 56 years as Member of the Competition Commission of India to be effective from 1st January, 2010. State with reference to the provisions of Competition Act, 2002 the term for which he will be appointed and whether he can be reappointed as such and also if he resigns after two years whether the vacancy can be filled up by the Chairman of the Commission. **4**

(b) Explain the importance of "Preamble" and "Proviso" being internal aids to interpretation. **4**

(c) A person aggrieved by an order made by the Special Director (Appeals) desires to file an appeal against the said order to the Appellate Tribunal but the period of limitation of 45 days as prescribed in Section 19(2) of the Foreign Exchange Management Act, 1999 has expired. Advise. **4**

Marks

(d) The Banking Companies, Financial Institutions and Intermediaries of securities market are under some obligations under the Prevention of Money Laundering Act, 2002. State, in brief, these obligations. **4**

(e) Explain briefly the procedure relating to enforcement of security interest under SARFAESI Act, 2002. **4**

FINAL
GROUP-I PAPER-4
CORPORATE AND
ALLIED LAWS

Roll No. ....

Total No. of Questions – 7

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Time Allowed – 3 Hours

MAY 2012

Maximum Marks – 100

ZIP

Answers to 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 answers in Hindi will not be valued.

Question No. 1 is compulsory.

Attempt any **five** questions from the remaining **six** questions.

Marks

1. (a) Mr. DRT is a director of PCS Ltd. The said company is having sufficient liquid funds and Mr. DRT is in dire need of funds. In order to mitigate the hardship of Mr. DRT the board of directors of PCS Ltd. wants to lend ₹ 5 lakhs to him and ₹ 2 lakhs to his wife. State whether such loans can be given and if so under what conditions. What would be your answer if the company PCS LTD would have been PCS Private Ltd. **4**

(b) M/s KMP Ltd, having a paid up share capital of ₹ 50 lakhs, appointed Mr. BPK as its sole selling agent for a period of 5 years effective from 1st January 2009. The company paid the following remuneration to BPK. **5**

Year	Amount of remuneration
2009	₹ 4,41,000/-
2010	₹ 6,32,000/-
2011	₹ 7,45,000/-

Marks

On and from 1st January 2012, the sole selling agency was terminated by the company. State briefly the approvals that are required to be taken by the company for giving effect to the appointment of Mr. BPK. Also calculate the amount of compensation payable by the company to Mr. BPK under the provisions of the Companies Act 1956.

(c) The Board of Directors of M/s RPP Ltd. in a meeting held on 30th April 2012 declared an interim dividend payable on the paid up equity share capital of the company. In the board meeting scheduled for 15th May 2012, the board wants to revoke the said declaration. State with reference to the provisions of the Companies Act, 1956 whether the board of directors can do so. **5**

(d) DVJ Ltd, a company incorporated under the Companies Act, 1956 applies to Bombay Stock Exchange for listing of its shares. The Stock Exchange refuses to grant listing without assigning any reasons for refusal. Company seeks your advice on the options available to it against the Stock Exchange and wants to move the Court. Examining the provisions of the Securities Contracts (Regulation) Act, 1956, advise the company. **6**

2. (a) Win Ltd. is a company incorporated 15 years ago and during the last three consecutive financial years it earned profits, as determined under Sections 349 and 350 of the Companies Act, 1956, of ₹ 5.00 lakhs, 8.00 lakhs and 11.00 lakhs. In order to augment its business prospects, it wants to make donations to political parties. State with reference to the provisions of the Companies Act, 1956 whether the company can make such donations and if yes to what extent. Also state which type of donation, subscription, payment, expenditure is regarded as contribution for political purpose. **8**

Marks

(b) In the course of administration of the affairs of a limited company, Chairman of the Board of directors came across a matter which required the approval by way of a board resolution. In the prevailing circumstances, it is not possible to convene and hold a Board meeting. The chairman approaches you to advise him of the way and the relevant procedure to obtain such approval without holding the Board meeting. Advise the chairman, taking into account the relevant provisions of the Companies Act, 1956. 8

3. (a) 60% shares of Indo-French Ltd. are held by the French group and balance by the Indian group. As per Articles of Association of the company, both groups had equal managerial powers. The relationship between the two groups soured and the operations of the company reached a deadlock. The Indian group approached the Company Law Board (CLB) for action against the French group for oppression as stated in Section 397 of the Companies Act, 1956. Based on the abovesaid facts, decide the following issues. 8

(i) Whether the contention of oppression against the French group by the Indian group is tenable ?

(ii) What are the powers of CLB in this regard ?

(b) The management of ABC Ltd. a listed company is contemplating to issue bonus shares in the ratio of 1 : 1. Explain briefly the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 to be followed by the management in this regard. Examine whether a bonus issue when announced can be withdrawn. 8

Marks

4. (a) Amar Textiles Ltd. is a company engaged in the manufacture of fabrics. The company has investments in shares of other bodies corporate including 70% shares in Amar Cotton Company Ltd. and it has also advanced loans to other bodies corporate. The aggregate of all the investments made and loans granted by Amar Textiles Ltd. exceeds 60% of its paid up share capital and free reserves and also exceeds 100% of its free reserves. In course of its business requirements, Amar Textiles Ltd. has obtained a term loan from Industrial Development Bank of India which is still subsisting. Now the company wants to increase its holding from 70% to 80% of the equity share capital in Amar Cotton Company Ltd. by purchase of additional 10% shares from other existing shareholders. State the legal requirements to be complied with by Amar Textiles Ltd. under the provisions of the Companies Act, 1956 to give effect to the above proposal. **8**

(b) The Reserve Bank of India issued certain directives to a Banking Company. The company does not care to act as per the directives. This fact comes to the notice of the officials of the Government of India. The officials, therefore desire to exercise the Central Government's powers to acquire the said Banking Company. Examining the provisions of the Banking Regulation Act, 1949, state the manner, if any, such powers can be exercised. Also, state the matters that may be incorporated in the scheme of acquisition. **8**

Marks

5. (a) Big Ben Ltd., a reputed public company, had advanced a sum of ₹ 20 lakhs to one of its directors Mr T on certain terms and conditions and fixing the time limit for repayment thereof. Now Mr T has approached the company with a request to extend the time limit for repayment of outstanding balance loan amounting to ₹ 10 lakhs by another six months. Answer the following having regard to the provisions of the Companies Act, 1956. **8**

(i) Who is authorized to grant the extension as requested by Mr T ?

(ii) Draft an appropriate notice for the meeting where such extension may be granted.

(b) Explain briefly the provisions of the Companies Act, 1956 regarding constitution of "Audit Committee". MNC Ltd. constituted an audit committee as required by the said Act. The committee in its report dated 30th April 2012 has pointed out various irregularities in the financial transactions entered into by the company. The management of the company does not agree with the contents of the audit committee report. Explain the action that can be taken in this regard. **8**

6. (a) DAJ Ltd. engaged in the construction work issued to public certain shares. The money received was used for the construction purposes. Since the company is not in a position to pay any dividend for a long time because of the longer gestation period, the Board of Directors of the company wants to pay interest out of capital to its shareholders. Advise the Board about the conditions to be complied with as required under the provisions of the Companies Act, 1956. **8**

Marks

(b) DEJYAS Company Limited incorporated in Singapore, desires to establish a place of business at Mumbai. You being a practising Chartered Accountant has been appointed by the company as a liaison officer, for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 1956, state the documents you are required to furnish on behalf of the company, on the establishment of a place of business at Mumbai. **8**

7. Attempt any **four** :

(a) BCD Exporters, New Delhi are engaged in export business and are required to realise and repatriate to India the foreign exchange arising out of export of goods by them. Advise BCD Exporters about the various exemptions from realizations and repatriation of foreign exchange as per Foreign Exchange Management Act 1999. **4**

(b) Hon'ble Justice Mr HCJ, a retired High Court Judge, attained the age of 61 years on 31st December 2011. The Central government appointed him as the chairperson of the Competition Commission of India with effect from 1St January 2012. State, with reference to the provisions of the Competition Act, 2002, the term for which he may be appointed as chairperson of the Competition Commission of India. Whether he can be reappointed as such and till when he can remain as chairperson of the Competition Commission of India ? **4**

(c) Explain the term "Offence of Money Laundering" within the meaning of the Prevention of Money Laundering Act, 2002. State the punishment for the offence of money laundering. **4**

Marks

(d) With reference to the provisions of Insurance Act, 1938 as amended by Insurance Regulatory and Development Authority Act, 1999, state the norms in respect of paid up equity capital for carrying out the business of an insurer. Also state the items that are excluded in determining the amount of paid up equity capital of an insurer under the said Acts. **4**

(e) Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard ? **4**

FINAL
GROUP-I PAPER-4
CORPORATE AND
ALLIED LAWS

Roll No. ....

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NOV 2012

BSE

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Question No. **1** is compulsory.

Attempt any **five** questions from the remaining **six** questions.

Marks

1. (a) The paid up capital of Western Zone Insurance Limited is ₹ 7 crore. Point out whether the said company is required to file Balance Sheets and Profit and Loss Account along with Director's and Auditor's Report for the year 2011-12 by using the XBRL taxonomy under the Companies Act, 1956 ? **4**

(b) The Board of Directors of Nimbahera Chemicals Limited propose to transfer more than 10% of the profits of the company to the reserves for the current year. Advise the Board of Directors of the said company explaining the relevant provisions of the Companies Act, 1956 and the rules thereunder. **5**

(c) A meeting of members of Jaora Agricultural Equipments Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 200 members holding 5,00,000 shares. 70 members holding 4,00,000 shares in the aggregate voted for the scheme. 120 members holding 90,000 shares in aggregate voted against the scheme. 10 members holding 10,000 shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 1956 whether the scheme was approved by the requisite majority ? **5**

Marks

(d) The Securities and Exchange Board of India issued an order against a stock broker to redress the grievances of the investors within the stipulated time. The stock broker failed to do so, which is an offence under the provisions of the Securities Contracts (Regulation) Act, 1956. Decide : 6

(i) Whether the offence committed by the stock broker is compoundable ? If so, by whom ?

(ii) Whether this offence can be compounded after institution of proceedings against the stock broker ?

2. (a) Neemuch Pharma Limited having an "Effective Capital" of ₹ 4 crore as on 31st March, 2012 raised ₹ 2 crore by way of issue of right shares in May, 2012 during the current Financial Year 2012-2013. The company is managed by Mr. Chandrasekhar, the Managing Director, and he is getting a minimum remuneration of ₹ 80,000 per month. The company proposes to appoint two whole-time Directors in July, 2012 on a consolidated minimum salary of ₹ 60,000 per month to each of them. 8

What is the "Effective Capital" for the purpose of determining the minimum remuneration payable to the proposed Whole-time Directors ? State the requirements to be complied with under Schedule XIII to the Companies Act, 1956 to give effect to the proposed appointments.

(b) Pipliya Powders Limited has four Directors. A Board meeting was convened. It was attended by two Directors only and they appointed Mr. Soorajbhan who was related to both of them, as an Additional Director. Decide, whether the said appointment is valid under the provisions of the Companies Act, 1956 ? 8

Draft a "Board Resolution" for appointment of a person as an Additional Director in a public company.

3. (a) Examine the validity of the following appointments with reference to the provisions of the Companies Act, 1956 : **8**

(i) Yashodharman Granites Limited reappointed Suresh & Company, a firm of Chartered Accountants, as auditors of the company at the Annual General Meeting held on 30^{th} September, 2011. The wife of one of the partners of Suresh & Company acquired large number of equity shares in Yashodharman Granites Limited on 5^{th} October, 2011. But Suresh & Company continue to function as statutory auditors of the company.

(ii) Dalauda Cement Limited appointed CA Naresh as statutory auditor of the company at the Annual General Meeting held on 30^{th} September, 2010. The next Annual General Meeting was held on 30^{th} September, 2011 but it was adjourned to 30^{th} November, 2011 for consideration of the accounts for the year ended 31^{st} March, 2011. CA Naresh continued to function as statutory auditor of the company even though a new auditor was appointed in his place at the Annual General Meeting held on 30^{th} September, 2011.

(b) Shyamgarh Chemicals Limited, a listed company, having a paid-up equity share capital of ₹ 80 crore and net worth of ₹ 120 crore as on 31^{st} March, 2012 proposes to raise funds to finance its expansion programme by issue of equity shares under the "Qualified Institutions Placement Scheme." **8**

Answer the following with reference to the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 :

(i) What are the conditions to be satisfied by the company so that it can make Qualified Institutions Placement ?

Marks

(ii) What is the maximum amount that can be raised by the company under the proposed issue of shares ?

(iii) What are the restrictions, if any, with regard to pricing of issue and transferability of shares by qualified institution buyers ?

4. (a) The Board of Directors of PQR Steel Limited propose to make the following appointments : **8**

(i) 'S', son of 'P', a Director of the said company, is proposed to be appointed as Managing Director of the company on a monthly remuneration of ₹ 75,000.

(ii) 'D', daughter of 'Q', another Director of the said company, is proposed to be appointed as Accounts Manager on a salary of ₹ 60,000 per month.

(iii) 'B', brother of 'R', another Director of the said company is proposed to be appointed as Purchase Manager in PQR Forgings Limited, a subsidiary of PQR Steel Limited on a salary of ₹ 60,000 per month.

Explain the legal requirements under the Companies Act, 1956 to be complied with by the company to give effect to the proposed appointments.

(b) The Managing Director of a large public company confessed that he was responsible for manipulation of the accounts and window dressing of the published accounts of the company. In view of this, the Central Government proposes to appoint its nominees as Directors of the company. Explain briefly the powers of the Central Government under the Companies Act, 1956 to appoint its nominees as Directors of a company to prevent oppression or mismanagement and the role of the Central Government with regard to the affairs of such a company. **8**

Marks

5. (a) Explain the term "Overriding Preferential Payments" under the provisions of the Companies Act, 1956. ABC Limited is being wound-up by the Court. The official liquidator has realised ₹ 100 lakh by selling the land and buildings mortgaged by the company in favour of its bankers. The company ows ₹ 200 lakh to the bank. The bank has claimed that the amount realised by sale of land and buildings must be paid in full to it in preference to the workmen's dues to the extent of ₹ 50 lakh. Examine the Bank's claim with reference to the provisions of the Companies Act, 1956. **8**

(b) Mr. Jhameshwar was working as Manager in a banking company. The Reserve Bank of India removed Mr. Jhameshwar on the ground that his conduct was detrimental to the interests of the depositors. Decide whether the Reserve Bank of India has power to remove the said Manager under the provisions of the Banking Regulation Act, 1949. What remedies are available to Mr. Jhameshwar against his removal under the provisions of the said Act ? **8**

6. (a) A producer company proposes to amend the objects specified in its Memorandum of Association and certain provisions in its Articles of Association. The Company also proposes to shift its registered office from the State of Kerala to Tamil Nadu. Explain the requirements under the provisions of the Companies Act, 1956 to give effect to these proposals. **8**

Marks

(b) The Directors of a public company received a show cause notice from the Registrar of Companies for violation of Section 295 of the Companies Act, 1956. State whether the said offence is compoundable under the said Act. Is it possible for a person to apply for compounding of offence even after prosecution has been launched ? Whether penalty paid in respect of compounding of an offence will be treated as a dis-qualification under Part I of Schedule XIII to the Companies Act, 1956 requiring approval of the Central Government for the appointment of such person as a Managing Director of a public company ? **8**

7. Attempt any **four** :

(a) Mrs. Chandra, a resident outside India, is likely to inherit from her father some immovable property in India. Are there any restrictions under the provisions of the Foreign Exchange Management Act, 1999 in acquiring or holding such property ? State whether Mrs. Chandra can sell the property and repatriate outside India the sale proceeds. **4**

(b) The Central Government, without referring the matter to the Supreme Court of India for inquiry, removed a member of the Competition Commission of India on the ground that he has become physically or mentally incapable of acting as a member. Decide, under the provisions of the Competition Act, 2002, whether removal of the member by the Central Government is lawful ? **4**

Marks

(c) Mr. Fraudulent has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. Advise, as to how can he be released on bail in this case ? **4**

(d) A life insurance policy, in favour of Kamal Kumar, came into force on 1st February, 2009. In January, 2012 the insurer came to know that there was a mis-statement in the proposal for insurance regarding the age of the nominee. Decide, under the provisions of the Insurance Act, 1938, whether the said insurance policy can be called in question ? **4**

(e) Briefly explain the meaning and application of the rule of "Harmonious Construction" in the interpretation of statutes. **4**

FINAL
GROUP-I PAPER-4
Roll No. ....CORPORATE AND
ALLIED LAWS

MAY 2013

Total No. of Questions – **7**

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JRM

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Question No. **1** is compulsory. Attempt any **five** questions from the remaining **six** questions.

Marks

1. (a) Mr. Ramanujam, one of the Directors in Debari Food Processing Limited was not satisfied with the performance of the company in financial matters. He requested Mr. Anandaraja, a Chartered Accountant, to inspect the books of accounts of the company on his behalf. Decide, under the provisions of the Companies Act, 1956 whether the said company can refuse to allow Mr. Anandaraja to inspect the books of accounts ? **4**

(b) The issued, subscribed and paid-up capital of Supreme Chemicals Limited is ₹ 2 crore consisting of 20,00,000 equity shares of ₹ 10 each. The said company has 800 members. For the purpose of relief against oppression and mismanagement, a petition was submitted before the appropriate authority duly signed by 90 members holding 1,00,000 equity shares of the said company. Subsequently, 30 members, who signed the petition, withdrew their consent. Decide, under the provisions of the Companies Act, 1956 whether the said petition is maintainable ? **5**

Marks

(c) Mr. Gopalasunderam, a Director in Fatehnagar Textiles Limited, took a loan from the company without obtaining the approval of the Central Government. Examine, under the provisions of the Companies Act, 1956 whether it is possible for him to avoid prosecution by applying to the Central Government for approval or by refunding the loan taken by him from the company. **5**

(d) The Securities and Exchange Board of India received serious complaints against Mr. Satyanarayan, a member of Mavli Stock Exchange. State as to what powers can be exercised by the Securities and Exchange Board of India to make enquiries and to take action in this matter, under the provisions of the Securities Contracts (Regulation) Act, 1956 ? **6**

2. (a) Hi-tech Engineering Limited engaged in the business of engineering construction and cement manufacturing, decided to concentrate on its core business of engineering construction and hive off (demerge) its cement business in favour of Premier Cement Limited. State the steps to be taken by Hi-tech Engineering Limited to give effect to the proposed demerger under the provisions of the Companies Act, 1956. **8**

(b) State the legal requirements to be complied with by a public company in respect of a Board Meeting. **8**

Examine with reference to the provisions of the Companies Act, 1956 whether notice of a Board Meeting is required to be sent to the following persons :

(i) Alternative Director ;

(ii) An interested Director ;

(iii) A Director who has expressed his inability to attend a particular Board Meeting ;

(iv) A Director who has gone abroad.

Marks

3. (a) The statutory auditors of Ghosunda Refinery Limited, did not verify the correctness of the particulars furnished in the Board's Report in respect of certain employees under Clause (2A) of Section 217 of the Companies Act, 1956. State the particulars which are required to be furnished under Clause (2A) of Section 217 of the said Act and also explain the legal position relating to verification of these particulars by the auditors of the said Company. **8**

(b) Modern Chemicals Limited, a listed company, propose to make a preferential issue of equity shares to the promoters of the Company. You are required to answer the following with reference to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 :- **8**

(i) What are the conditions to be complied with by the Company to give effect to the proposed preferential issue ?

(ii) What is the price at which the proposed issue can be made ?

(iii) What is the lock-in period in respect of shares allotted on preferential basis to promoters ?

4. (a) Mr. Kishore is a Director of AB Limited and PQ Limited. AB Limited was regular in filing the Annual Returns but did not file annual accounts for the years ended 31st March, 2009, 2010 and 2011. AB Limited did not pay interest on loans taken from a public financial institution from 1st April, 2011 and also failed to repay matured deposits taken from public on due dates from 1st April, 2012 onwards. **8**

Answer the following in the light of relevant provisions of the Companies Act, 1956 :-

Marks

(i) Whether Mr. Kishore is disqualified under Section 274 (1) (g) of the Companies Act, 1956 and if so, whether he can continue as a Director in AB Limited and also seeks reappointment when he retires by rotation at the Annual General Meeting of PQ Limited to be held in September, 2013 ?

(ii) Mr. Kishore is proposed to be appointed as Additional Director of XY Limited in June, 2013. Is he eligible to be appointed as Additional Director in XY Limited ?

(b) Morbani Woods Limited decide to appoint Mr. Wahid as its Managing Director for a period of 5 years with effect from 1st May, 2013. Mr. Wahid fulfils all the conditions as specified in Part I and Part II of Schedule XIII of the Companies Act, 1956. **8**

The terms of appointment are as under :

(i) Salary ₹ 1 lakh per month ;

(ii) Commission, as may be decided by the Board of Directors of the company ;

(iii) Perquisites :

Free Housing,

Medical reimbursement upto ₹ 10,000 per month,

Leave Travel concession for the family,

Club membership fee,

Personal Accident Insurance ₹ 10 lakh,

Gratuity, and

Provident Fund as per Company's policy.

You, being the Secretary of the said Company, are required to draft a resolution to give effect to the above, assuming that Mr. Wahid is already the Managing Director in a public limited company.

Marks

5. (a) What is meant by "misfeasance" ? Who can initiate misfeasance proceedings and is there any time limit for initiating such proceedings ? Examine the extent to which the legal representatives of a deceased Director, against whom misfeasance proceedings were initiated, can be held liable under the provisions of the Companies Act, 1956. **8**

(b) The Board of Directors of a newly incorporated Banking Company is required to file the accounts and Balance sheet. Advise the Board of Directors about the law relating to preparation, signing and filing of accounts and Balance sheet under the provisions of the Banking Regulation Act, 1949. Also state the applicability of the provisions of the Companies Act, 1956 in this regard. **8**

6. (a) Southern India Sugar Producer Company Limited, having paid-up capital of ₹ 5 lakh and free reserves of ₹ 3 lakh, propose to make the following loans and investments : **8**

(i) Loan of ₹ 2 lakh to Mr. Ram, a member of the Company, for a period of one year and a loan of ₹ 1 lakh to Mr. Shekhar, a Director of the Company for a period of six months ;

(ii) Investment of ₹ 3 lakh in the equity shares of XYZ Marketing Limited.

State the restrictions, if any, in this regard and also the legal requirements to be complied with by the Company under the provisions of the Companies Act, 1956.

Marks

(b) Examine in the light of the provisions of the Companies Act, 1956 whether the following companies can be considered as "Foreign Companies" :- **8**

(i) A company incorporated outside India having a share registration office at New Delhi;

(ii) A company incorporated outside India having shareholders who are all Indian citizens ;

(iii) A company incorporated in India but all the shares are held by foreigners.

Also examine whether the above companies can issue Indian Depository Receipts under the provisions of the Companies Act, 1956 ?

7. Attempt any **four** :

(a) Mr. Kishore resided in India during the Financial Year 2009-2010 for less than 182 days. He came to India on 1st April, 2010 for business. He closed down his business on 30th April, 2011 and left India on 30th June, 2011 for the purpose of employment outside India. Decide the residential status of Mr. Kishore during the Financial Years 2010-2011 and 2011-2012 under the provisions of the Foreign Exchange Management Act, 1999. **4**

(b) Bombay Textiles Limited and Gujarat Textiles Limited marketing their products in India propose to be amalgamated. The enterprise created as a result of the said amalgamation will have assets of value of ₹ 300 crore and turnover of ₹ 1000 crore. Examine whether the proposed amalgamation attracts the provisions of the Competition Act, 2002 ? **4**

Marks

(c) "Money Laundering" does not mean just siphoning of fund." **4**

Comment on this statement explaining the significance and aim of the Prevention of Money Laundering Act, 2002.

(d) Explain briefly the concept of "Securitisation" under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. **4**

(e) Section 294 (2) of the Companies Act, 1956 provides that "the Board shall not appoint a Sole Selling Agent for any area except subject to the condition that the appointment shall cease to be valid if it is not approved by the company in the First General Meeting held after the date on which the appointment is made." **4**

Examine whether the procedure under the above provision is mandatory or directory ?

State also the distinction between a mandatory provision and a directory provision.

Roll No. ....

FINAL
GROUP-I PAPER-4
CORPORATE AND
ALLIED LAWS

NOV 2013

Total No. of Questions – 7

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HCD

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Question No. **1** is compulsory.

Attempt any **five** questions from the remaining **six** questions.

Marks

1. (a) The Annual General Meeting of ABC Limited declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2013. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the Company, up to 30th June, 2013. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for default period. Decide in the light of provisions of the Companies Act, 1956, whether Mr. Ranjan would succeed ? Also state the directors' liability in this regard under the Act. **5**

(b) The Board of Directors of XYZ Limited decided to pass a resolution to purchase 35,000 equity shares of ₹ 100 each of PQR Limited at a meeting. Draft a specimen Board Resolution to be passed at the said meeting. **4**

Marks

(c) What is Director Identification Number (DIN) ? Mr. Mohan, a newly appointed director of RST Limited applied for DIN. Advise him about the list of scanned documents required to be attached with DIN-1. 5

(d) A recognized stock exchange proposes to make bye-laws for the regulation and control of contracts relating to the purchase and sale of securities. State the legal requirements under the Securities Contracts (Regulation) Act, 1956 to give effect to the proposal. Explain the powers of the Securities and Exchange Board of India to amend the bye-laws of a recognized stock exchange. 6

2\. (a) Mr. Raman, brother of Mr. Rahul, a director of VMR Limited, was appointed as Chief Accounts Officer on a monthly salary ₹ 2,80,000 without the knowledge of Mr. Rahul. Referring to the provisions of the Companies Act, 1956, state the time limit in which the Company may complete the necessary legal formalities for the said appointment. Also explain the consequences, in case the Company fails to do so. 8

(b) The Board of Directors of Raj Steels Limited consists of one Managing Director, one Technical Director and three ordinary Directors. Mr. Sriram, an ordinary Director sent his resignation in writing to the Company. Mr. Raj, the Managing Director also sent his resignation to the Chairman of the Board of Directors and requested that he shall be relieved immediately. When does the resignation take effect ? Is it possible for a Director to resign orally or withdraw the resignation ? 8

Marks

3. (a) One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj a qualified Chartered Accountant was appointed as an auditor of the Company at the Annual General Meeting held on 30th April 2013 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act 1956. Decide, whether the objection of Mr. Sanjay is tenable ? Also examine the consequences of the above appointment under the said Act. **8**

(b) NCP Limited, a listed company proposes to issue equity shares under the "Institutional Placement Programme". Explain the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 on the following aspects : **8**

(i) Conditions for institutional placement programme.

(ii) Minimum number of allottees.

(iii) Restrictions on size of the offer.

(iv) Transferability of eligible securities.

4. (a) The Board of Directors of Quality Forgings Limited having a paid-up share capital of ₹ 80 lakhs appointed Ram Marketing Limited as sole selling agent for a period of five years with effect from 1st January, 2012. The Directors of Ram Marketing Limited were holding fully paid-up shares of face value of ₹ 3.5 lakhs in Quality Forgings Limited. Special Resolution approving the appointment of sole selling agent was passed in the general meeting held on 20th May, 2012. Approval of Central Government was obtained on 1st October, 2012. Examine with reference to the Provisions of the Companies Act, 1956 whether the appointment of sole selling agent is valid. **8**

Marks

What would be your answer if paid-up share capital of Quality Forgings Limited was only ₹ 40 lakhs on 1st January, 2012 and it was increased to ₹ 80 lakhs on 1st January, 2013.

(b) Explain the Provisions of the Banking Regulation Act, 1949 relating to audit of accounts of a banking company, appointment of Auditor and the Auditor's report. State whether the Provisions of the Companies Act, 1956 relating to powers, duties and functions of an Auditor of a company are applicable to the statutory Auditors of a banking company. **8**

5. (a) Modern Textiles Limited incurred huge losses during the last three financial years and its financial position was bad. The Company created a legal mortgage on some of its immovable properties in favour of a bank on 1st September, 2012 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 winding up petition in the court on 15th January, 2013. The court passed an order of winding up on 1st August, 2013. Answer the following with reference to the provisions of the Companies Act, 1956 : **8**

(i) What is meant by 'Fraudulent Preference' ? State the effect of 'Fraudulent Preference'.

(ii) Whether the creation of legal mortgage by the Company in favour of the bank would amount to fraudulent preference ?

Marks

(b) Examine the merits of the following petitions made under Sections 397 and 398 of the Companies Act, 1956 in the light of judicial pronouncements made in this regard : **8**

(i) A group of shareholders holding 12% of the issued share capital of Unique Products Limited have filed a petition before the Company Law Board alleging various acts of illegal, invalid and irregular transactions entered into in the name of the Company.

(ii) Speciality Chemicals Private Limited is controlled by two groups of members. The group holding majority of shares made an application to Company Law Board alleging oppression by the minority group.

6. (a) NKM Producer Company passed a resolution at its general meeting on 30^{th} April 2013 to reconvert the producer company into inter-state co-operative society under the Provisions of the Companies Act, 1956. Advise the Company, as a professional, regarding the method to be followed for re-conversion of Producer Company to inter-state co-operative society under the above Act. **8**

(b) Premier Technologies Limited proposes to takeover Modern Solutions Limited, an unlisted company, by making an offer to the members of Modern Solutions Limited to purchase all their shares. At present, Premier Technologies Limited are not holding any shares in Modern Solutions Limited. Explain briefly the steps to be taken under the Companies Act, 1956 to give effect to the proposed takeover. **8**

Marks

7. Attempt any **four** :

(a) Examine with reference to the Provisions of the Foreign Exchange Management Act, 1999 and the rules made thereunder whether foreign exchange can be drawn for the following purposes : **4**

(i) Mr. Gopal, a cine artist in India proposes to organize a cultural programme at Dubai and requires to draw foreign exchange US $ 1,00,000 for this purpose.

(ii) Mr. Shah proposes to visit United States on a business tour and for this purpose he wants to draw foreign exchange US$ 40,000 for meeting expenses.

(b) A truck manufacturing company proposes to enter into distributorship agreements requiring the dealers not to sell trucks of other manufacturers and also not to sell the trucks outside the territory assigned to them. Examine with reference to the Provisions of the Competition Act, 2002 whether the proposed agreements will be considered as Anti-Competitive Agreements and void in case the company entered into such agreements. **4**

(c) PTM Limited, a banking company maintained the record of all transactions for a period of 5 years from the date of cessation of the transactions between the clients and the company. Decide whether the Company has fulfilled its obligation under the provisions of the Prevention of Money Laundering Act, 2002. **4**

Marks

(d) Mr. Krishna wants to nominate Mr. Ram, his 10 years old son, as a nominee for his life insurance policy. Advise him under the provisions of the Insurance Act, 1938. **4**

(e) The definition of a word in a statute may be either restrictive or extensive. Elaborate this with reference to the definition of 'Managing Director' in the Companies Act, 1956. **4**

Roll No. .... | FINAL GROUP-I PAPER-4 CORPORATE AND ALLIED LAWS | MAY 2014

Total No. of Questions – **7**

Total No. of Printed Pages – **8**

Time Allowed – **3** Hours

Maximum Marks – **100**

CBP

Answers to 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 valued.

Question No. **1** is compulsory.

Attempt any **five** questions from the remaining **six** questions.

Marks

1. (a) Suspecting of bungling the financial resources of the company, the shareholders of Dubious Industries Ltd. led by Mr. X, at the Annual General Meeting of the company held on 30-09-2013 resolved to appoint M/S Sharma & Sharma, the Statutory Auditors of the company to carry out special audit in accordance with the provisions of the Companies Act, 1956. The management of the company refused to co-operate with the statutory auditors in carrying out the special audit. Examine whether the management is justified in their refusal. Advise Mr. X with reference to the relevant provisions of the Companies Act, 1956. **5**

   (b) CBA Ltd. wants to declare dividend in the year 2013-14 though it will not earn any profit this year due to heavy losses. The company has been declaring dividend for the last 5 years. To maintain its reputation the company wants to declare dividend this year too out of accumulated past profits. Explain how the company can achieve the objective to declare dividend. **5**

Marks

(c) Mr. AMR was appointed as a sole selling agent of M/S ZYX Ltd. with effect from 1st January, 2009 for a period of five years. Mr. AMR earned his remuneration during the year 2009 to 2011 as mentioned below : **4**

Year 2009 – 5,00,000

Year 2010 – 6,00,000

Year 2011 – 7,00,000

From 1st January, 2012, the sole selling agency agreement was terminated by ZYX Ltd. Calculate the amount of compensation payable by the company to Mr. AMR under the provisions of Companies Act, 1956.

(d) A group of complainants have alleged that Mr. Z, a Member of the Securities and Exchange Board of India (SEBI) has pecuniary interest in some of the cases that came up before the Board and that he misused his position and therefore, he should be removed from his office. The complainants seek your advice. Advise. **6**

2. (a) Sweet Tea Limited wants to sell its tea by entering into contract with the following parties : **8**

(1) Tea Bros, a partnership firm in which a director of Sweet Tea Limited is a partner.

(2) R & T Private Limited in which one of the director of Sweet Tea Limited is a member.

(3) Strong Tea Limited in which one of the directors of Sweet Tea Limited is a director holding 3% of the paid up capital of Strong Tea Limited.

Advise the steps that should be taken by Sweet Tea Limited taking into account the relevant provisions of the Companies Act, 1956 for entering into contracts in which the directors are interested.

Marks

(b) (i) Mr. OK is a director of VRS Ltd. He intends to construct a residential building for his own use. The cost of construction is estimated at ₹ 1.35 Crores, which Mr. OK proposes to finance partly from his own sources to the tune of ₹ 60 lacs and the balance ₹ 75 lacs from housing loan to be obtained from a housing finance company. For the purpose of obtaining the loan, he has approached the housing finance company which has in principle agreed to grant the loan, but has put a condition. The condition put by the housing finance company is that the Company VRS Ltd. of which Mr. OK is a director should provide the guarantee for repayment of the loan and interest as per the terms of the proposed agreement for granting the loan to Mr. OK. You are required to advise Mr. OK on the matter with reference to the provisions of the Companies Act, 1956. **8**

(ii) Draft a Board Resolution of VRS Ltd. for providing guarantee for ₹ 75 lacs in respect of a loan to be obtained by Mr. OK, a director thereof from a Housing Finance Company for construction of a residential house for his own use.

3. (a) ABC Private Limited was incorporated on 15-09-2013 in the State of Maharashtra by a group of Professional Engineers without any knowledge about the maintenance of the books of account. The company has appointed you as the Chief Accounts Officer at New Delhi where the books of account will be maintained. Keeping the provisions of Section 209 of the Companies Act, 1956, advise the management on **8**

(i) the nature of books to be maintained

(ii) the period for which the accounts have to be preserved and

(iii) the steps to be taken if the books of accounts are to be kept in New Delhi.

Marks

(b) The Balance Sheet of Royal Ltd. as at 31-03-2013 disclosed the following details : 8

(i)	Authorised share capital	₹ 400 crores
(ii)	Paid up share capital	₹ 150 crores
(iii)	Reserves and surplus	₹ 750 crores

The company has issued in the year 2008, Fully Convertible Debentures of ₹ 100 crores which are due for conversion in the year 2013. The company proposes, after the conversion of Debentures to issue Bonus shares in the ratio of 1 : 1. Explain briefly the requirements of the Companies Act, 1956 and the Securities and Exchange Board of India (SEBI) guidelines to be followed by the company in this regard.

4. (a) Mr. RK, a director of Excellent Limited has applied for a loan of ₹ 70 lacs for the purpose of financing the education of his son. The company has applied to the Central Government for approval to grant the loan. While the matter is under consideration of the Central Government, the company has lent a sum of ₹ 50 lacs to Mr. RK. Finally, the Central Government has rejected the company's request for the grant of loan and Mr. RK has refunded the amount of ₹ 50 lakhs to the company. The above said facts have been pointed out by the auditors of the company in their audit report and based on that report the Registrar of Companies has issued a show cause notice to the company and its directors. Examine whether the company has contravened any of the provisions of the Companies Act, 1956 and the remedial action to be taken by the company in this regard. 8

Marks

(b) A group of minority shareholders of SP Financiers Limited has made a complaint to the Central Government that the persons in charge of the management of the company have been guilty of fraud and negligence causing huge losses to the company and to the detriment of minority shareholders. Examine the powers of the Central Government to redress the grievances of the minority shareholders of the company under the provisions of the Companies Act, 1956. 8

5. (a) Superb Limited went for a public issue of Equity shares (₹ 10 crores) of ₹ 10 each. The shares were subscribed to an extent of 95% of the total issue. The shares of the company were accepted for listing by Bombay Stock Exchange but subsequently the permission was cancelled on certain grounds. On an appeal to the Central Government by the company, the decision of the Stock Exchange was held to be valid. As a result, the application money had become refundable to the allottees. The company, had no prospects of doing any business and there was a complete deadlock among the Directors. Looking at the circumstances, certain creditors filed a petition in the court for winding up of the company on the ground that the company had become commercially insolvent. The shareholders of the company object to the petition of the creditors. Decide giving reasons : 8

(i) Whether the objections of the shareholders will sustain and the court can dismiss the petition of creditors for winding up of the company ?

(ii) State the provisions of the Companies Act, 1956 in this regard.

Marks

(b) Due to financial irregularities, the affairs of MNP Bank Limited have gone from bad to worse and this fact has come to the notice of the Reserve Bank of India as well as Central Government. Examining the provisions of the Banking Regulation Act, 1949, answer the following : 8

(i) Powers of RBI to inspect the Bank.

(ii) Powers of Central Government to give directions in this matter.

6. (a) (i) In the case of a producer company, the auditor is required to report on additional matters apart from the provisions contained in Section 227 of the Companies Act, 1956. State the additional matters on which the auditor has to report in the case of a producer company. 4

(ii) State the documents that are required to be delivered by a foreign company at the time of establishment of a place of business in India. State to whom the said documents are to be delivered. 4

(b) Mutual Distrust Private Limited has two shareholders namely A and B holding 51% and 49% respectively. Both are working as directors. Due to differences between them, A decides to hold a board meeting on 30th April, 2014 but the same could not be held due to non-co-operation from B and lack of quorum. Advice A about the steps that can be taken under the Companies Act, 1956 to resolve the matter. 8

Marks

7. Attempt any **four** :

(a) Mr. V, a person of Indian origin and resident of USA desires to acquire two immovable properties in India comprising **4**

(i) a residential flat in Mumbai and

(ii) a farm house on the outskirts of Mumbai.

Explain the steps he has to take in this matter having regard to the provisions of FEMA, 1999.

(b) MNO Tyres Limited is in the business of manufacture of automotive tyres for the past one year. To increase its market share, the company has decided to reduce the prices of tyres. The cost structure of the passenger car tyre is as under : **4**

(i) Cost of production ₹ 5,000 per tyre

(ii) Selling price ₹ 6,000 per tyre

The company started selling tyres @ ₹ 5,200 per tyre and the other tyre manufacturers made a complaint to the Competition Commission of India stating that MNO Tyres Limited is guilty of predatory pricing having the effect of reducing the competition or eliminating the competition. Advise MNO Tyres Limited as to the meaning of predatory pricing and whether the company can be said to have indulged in the said practice having regard to the provisions of the Competition Act, 2002.

Marks

(c) The Board of directors of SUV Limited, a banking company incorporated in India, for the accounting period ended 31-03-2013 transferred 15% of its net profit to its Reserve Fund. Certain shareholders of the company object to the above act of the Board on the ground that it is violative of the provisions of the Banking Regulation Act, 1949. Decide whether the contention of the shareholders is tenable under the Banking Regulation Act, 1949. **4**

(d) Explain the meaning of the terms "non-performing asset" and "asset reconstruction" used in the SARFAESI Act, 2002. **4**

(e) Explain the meaning of the term "Money Laundering". Z, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002. **4**