

Test Series: August, 2017

MOCK TEST PAPER 1

FINAL COURSE: GROUP –I

PAPER – 4: CORPORATE AND ALLIED LAWS

Question No.1 is compulsory.

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

Time Allowed – 3 Hours

Maximum Marks – 100

1. (a) Construction Ltd. took up a project of the National Highways Authority of India on the basis of a guarantee provided by the Central Government regarding payment of dividends to the shareholders of the company. Can the company pay dividends out of the above guaranteed money? Referring to the applicable provisions of the Companies Act, 2013, advise the company regarding the sources out of which the company can pay dividends. (5 Marks)
- (b) Mr. Competent is an auditor of Capable Ltd. While auditing the accounts of the Capable Ltd. for 2016-2017, he finds manipulation of funds around 2 crore committed by the officers of the company against the Capable Ltd. Examine in the light of the Companies Act, 2013 the frauds required to be reported by Mr. Competent. (5 Marks)
- (c) Mr. Z was appointed as the presiding officer of the Securities Appellate Tribunal (SAT) for a term of five years. Considering his good performances during the tenure of his service, it was proposed by the competent authority to re-appoint him for another term. During reappointment, he has completed good 69 years of age. Examine in the light of the SEBI Act, 1992, the eligibility of his appointment/ reappointment as a presiding officer in the Securities Appellate Tribunal. (5 Marks)
- (d) Mr. Azad, an independent director of X company, was appointed in the AGM for a period of three years. After the expiry of 3 years he was re-appointed for a period of 5 years. Considering that though Mr. Azad has completed two tenures but hasn't completed ten years in total, therefore he may be appointed in the upcoming AGM for another 2 years to complete his total term of 10 years. Conferring in the light of the Companies Act, 2013, state the validity of reappointment of Mr. Azad for further term in the company. (5 Marks)

2. (a) (i) ABC Limited is a wholly owned subsidiary company of XYZ Limited. The Company wants to make application for merger of Holding and Subsidiary Companies under Section 232. The Company Secretary of the XYZ Limited is of the opinion that company cannot apply for merger as per section 232. The company shall have to apply for merger as per section 233 i.e. Fast Track Merger. Is the contention of Company Secretary being valid as per law?
(5 Marks)
- (ii) Provide various grounds on which the investigation is assigned to Serious Fraud Investigation Office?
(3 Marks)
- (b) State the legal position in the given situations:
- (i) Mr. Khan appointed as an Independent Director on the Board of a company, be appointed in its subsidiary or its holding or its associate company.
- (ii) Mr. D, proposes his candidature as a director in X Ltd. along with the deposit of 1 lac rupees. Later Mr. D failed to be appointed but received 30 % of total votes. D asked X Ltd. to refund the deposit but the company denied to pay as he failed to be elected.
(8 Marks)
3. (a) (i) While counting the limit of 20 for holding directorship under section 165 should section 8 companies and foreign body corporate (whether holding or subsidiary or otherwise) be also included?
- (ii) Xyz, a small company held its Board meetings on 1st January, 2016, 31st December 2016 and 1st January, 2017 then what is the due date of next board meeting?
(8 Marks)
- (b) Advise the Board of Director of Spectra Papers Ltd. regarding validity and extent of their powers, under the provisions of the Companies Act, 2013 in relation to the following matters:
- (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.
(8 Marks)
4. (a) (i) XYZ Ltd is a listed company having turnover of ₹ 1200 crores during the financial year 2015-16. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. Company finalised the project under its CSR initiatives which require funds @ 5 % of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise.

- (ii) A Ltd. has one subsidiary i.e. B Ltd. & one associate company i.e. C Ltd. B Ltd. is the entity incorporated outside India and C Ltd. is the entity incorporated in India. State the law with respect to the consolidation of financial statements in the given case. (8 Marks)

(b) What is meant by 'oppression'? State whether the aggrieved party would succeed in obtaining relief from Tribunal on the ground of oppression in the following cases:

- (i) The majority of the Board of directors override the minority directors and the minority directors apply to Tribunal complaining oppression by majority directors.
- (ii) A petition by majority shareholders complaining oppression by minority shareholders.

Give your answer according to the provisions of the Companies Act, 2013. (8 Marks)

5. (a) Apex Limited failed to repay the amount borrowed from the bankers, ACE Bank Limited, which is holding a charge on all the assets of the company. The Bank took over management of the company in accordance with the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The company is managed by a Managing Director, Mr. X. Referring to the provisions of the said Act, examine whether Mr. X is entitled to compensation for loss of office and also explain the effect of such takeover on certain rights of the shareholders of the company. (8 Marks)
- (b) State the law with respect to the Establishment of Special Court? Mr. A is judicial magistrate in a lower court. He was appointed to hold the office of the special court for the speedy disposal of the pending cases under the Act. Decide in the light of the Companies Act, 2013, whether the appointment of Mr. A is tenable. (8 Marks)
6. (a) Mr. X was appointed as company liquidator by tribunal during the liquidation proceedings in the sale of assets. Later it was discovered that Mr. X is relative of one of the directors of the company. Certain creditors of the company filed an application before the tribunal that there is a lack of independence during the term of his appointment due to his relation with director. State the legal position of holding of Mr. X as a company liquidator during the liquidation proceedings. (8 Marks)
- (b) What is the procedure for replacement of insolvency resolution professional? What are the key tasks to be performed by a Resolution Professional? (8 Marks)

7. Attempt any four:

- (a) M/s Samrat is a company engaged in the providing of services of supplying goods all over the world through aircrafts. The aircrafts of the said company is registered and insured in India with the reputed insurance company. Company found that the insurance policy of one of aircraft which is in Europe had expired. Company said to his officer to get new Insurance policy of that aircraft in Europe. State the validity of such an act of registration of aircraft in Europe. *(4 Marks)*
- (b) Universal, a foreign company, incorporated in Australia was carrying on its business in Delhi related to manufacturing of automobile parts. Due to failure of its compliance with the respective law of the country under which it was incorporated, it was ceased to exist. Decide in the light of the Companies Act, 2013 the status of the company and the effect on the conduct of business in India. *(4 Marks)*
- (c) State the circumstances when persons are not entitled to make an application to initiate corporate insolvency resolution process.
- Suppose a corporate debtor has committed a default and is undergoing a corporate insolvency resolution process. A corporate applicant Mr. X thereof files an application for initiating corporate insolvency resolution process with the Adjudicating Authority, State whether he is entitled to make an application to initiate corporate insolvency resolution process? *(4 Marks)*
- (d) Explain the effect of usage developed by contemporary opinion through practice under any statute with an example. *(4 Marks)*
- (e) What is the effect of order of moratorium in the Insolvency and Bankruptcy Code, 2016? *(4 Marks)*