

Question 1 is compulsory. Answer any other five questions

Q.1.	The following information was obtained by the secretarial auditor of ABC Limited, a company engaged in multiple businesses having an aggregate turnover of Rs. 5,000 cr., for the financial year 2017-2018. Advise briefly about the legal implications under the Companies Act, 2013: - Mr. X was appointed as managing director cum chairman of the company at an annual remuneration of Rs. 40,00,000 per annum, but no records or documents were maintained by the company regarding such an appointment; [3 marks] Hint: Refer Section 203 for appointment of an individual as MD cum Chairman. Refer Section 190 for Contract of employment with managing or whole-time directors - The goods lying in the stock of ABC Limited were exchanged with one of the old machinery lying in the premises of XYZ and Co, a partnership firm, in which Mr. X (<i>supra</i>) and Mr. Y, are partners; [3 marks] Hint: Refer Section 192 for Restriction on non-cash transactions involving directors - Mr. C, was appointed as the CFO of ABC Limited on the condition that he has to purchase 5% shares of PQR Limited (ABC's wholly-owned subsidiary), after 5 years at a price of Rs. 250 per share; [3 marks] Hint: Refer Section 194 for Prohibition on forward dealings in securities of company by director or key managerial personnel - The finance and accounts department of company prepared its quarterly results for being discussed at the next board meeting and filing thereto with the stock exchanges. The management trainee of the company got to know that company is having splurged profits and hence he purchased shares of the company from the market on the basis of such information; [3 marks] Hint: Refer Section 195 for Prohibition on insider trading of securities - The marketing and sales team of the company influenced various customers to buy company's products by highlighting the benefits of such products. Later on it was discovered that in the name of this company, they were selling the impersonated products of other rival company, for a secret commission of 2% on sales being affected; [3 marks] Hint: Refer Section 447 for Punishment for fraud - Mr. P, the whole time director of the company was terminated from his services on the grounds that Mr. L, his un-liked relative acquired 40% equity in the company, and he alongwith some other shareholders passed a resolution to that effect. Mr. P has served notice for such pre-mature termination and is claiming compensation thereof, for which the company has denied to accept any such liability towards him; [3 marks] Hint: Refer Section 191 for Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares - Mr. W was appointed as alternate director to Mrs. M another woman executive director of the company; [1 mark]; Hint: Refer Section 161(2) for appointment of alternate director. There is no prohibition to appoint a male person as an alternate director to woman director - Mr. E, the small shareholders' director in the company, acquired qualification shares in the company as per its articles of association but he failed to pay the calls in arrears for 5 months [1 mark] Hint: Refer Section 149 whereby an independent director cannot hold together with his relatives two per cent or more of the total voting power of the company. Thus, the qualification shares cannot be for 2% or more the total voting power of the company. Refer Section 164(1) for disqualification of directors for non-payment of calls in arrears for ≥ 6 months
Q.2.(a).	Investigation proceedings were initiated by Central Government against M/s <i>Yeh Kaisi Airlines Limited</i> on account of allegations of several irregularities in books of account, misappropriation of funds, etc. The investigation was assigned to SFIO considering the involvement of public interest at large. Mr. Y, the whole time director of the company and Mrs. Y, the CFO of the company, were also arrested by the officers of SFIO for his alleged involvement in fraudulent activities. In this connection, the company has appointed you as a legal advisor and has requested you to guide about the following information being submitted before you: Can Mr. Y and Mrs. Y be released on bail or bond; Hint: Refer Class Notes for dictation given under section 211 and 212

	ii. The company has made also tax evasions and money laundering in the previous years. Whether commencement of SFIO proceedings will relieve them of (expected) investigation proceedings under the Income Tax Act, 1961 and PMLA, 2002; Hint: Refer Section 211 and 212 whereby investigation proceedings under other laws will continue even if SFIO proceedings under “this” Act have commenced. iii. Whether Mr. X, the chairman cum managing director of the company, who has flown abroad to avoid all these proceedings will be able to survive through the escape route adopted by him; Hint: Refer Section 217 about Letter of Request iv. Can the investigating officers also investigate the past officers and sister concerns of the company; Hint: Refer Section 211, 212 and 219. Past officers and sister concerns can also be investigated v. Can the company remove those employees who can make disclosures about the company during the course of investigation; Hint: Refer Section 218 of the Companies Act about Protection of employees during investigation vi. Since you and the statutory auditors are in possession of privileged information about the company, can investigating officers compel you and the auditors to disclose all such information before them; Hint: Refer Section 227 for Legal advisers and bankers not to disclose certain information. Auditors are not considered as legal advisors. vii. The Central Government also has filed an application before NCLT pursuant to which assets of the company have been freezed for a period of 1 year. Is there any remedy to quash such freezing order; Hint: Refer Section 221 for Freezing of assets of company on inquiry and investigation. Appeal can be filed to NCLAT under section 421 viii. One of the other directors (other than above) wants to file an application for compounding of his offences before NCLT. Can he do so. [8 marks] Hint: Refer Section 441 for Compounding of certain offences																																																																
Q.2.(b).	Following is the latest audited Balance Sheet of XYZ Ltd.: <table><tr><th>Capital and Liabilities</th><th>Rs.</th><th>Assets</th><th>Rs.</th></tr><tr><td>Equity Share Capital (10,000 shares of Rs. 100 each)</td><td>10,00,000</td><td>Goodwill</td><td>1,00,000</td></tr><tr><td>Less: Calls unpaid</td><td>10,000</td><td>Land and buildings</td><td>10,50,000</td></tr><tr><td></td><td>9,90,000</td><td>Plant and Machinery</td><td>20,25,000</td></tr><tr><td>Preference Share Capital</td><td>1,50,000</td><td>Equity Shares in A (P) Ltd.</td><td>1,25,000</td></tr><tr><td>Securities Premium A/c</td><td>1,50,000</td><td>Preference Shares in B Ltd.</td><td>50,000</td></tr><tr><td>Capital Redemption Reserves</td><td>2,25,000</td><td>Debentures in C Ltd.</td><td>1,00,000</td></tr><tr><td>General Reserve</td><td>5,00,000</td><td>Shares in P Ltd.</td><td>2,25,000</td></tr><tr><td>Profit and Loss A/c</td><td>2,20,000</td><td>Capital in Z and Co.</td><td>1,00,000</td></tr><tr><td>Sinking Fund Reserve</td><td>1,10,000</td><td>Current Assets</td><td>55,000</td></tr><tr><td>Dividend Equalisation Reserve</td><td>60,000</td><td></td><td></td></tr><tr><td>Loan from Public Financial Institutions</td><td>10,00,000</td><td></td><td></td></tr><tr><td>Deposits from S Ltd</td><td>2,00,000</td><td></td><td></td></tr><tr><td>Current Liabilities</td><td>1,25,000</td><td></td><td></td></tr><tr><td>Provision for Taxation</td><td>1,00,000</td><td></td><td></td></tr><tr><td></td><td>38,30,000</td><td></td><td>38,30,000</td></tr></table> The following is the additional information: (i) Of the equity share capital, 3,000 shares have been issued as rights shares and 2,000 shares as bonus shares. (ii) B Ltd. is subsidiary of XYZ Ltd. with 90% shareholding, whereas A (P) Ltd. is wholly owned subsidiary of XYZ Ltd. (iii) Z and Co. is a partnership firm. Whether following additional investments can be made by a decision taken in a Board Meeting: (i) Loan to A (P) Ltd. = Rs. 10,00,000 (ii) Debentures in B Ltd. = Rs. 2,25,000 (iii) Purchase of shares of Shree Ltd. in the open market = Rs.95,000	Capital and Liabilities	Rs.	Assets	Rs.	Equity Share Capital (10,000 shares of Rs. 100 each)	10,00,000	Goodwill	1,00,000	Less: Calls unpaid	10,000	Land and buildings	10,50,000		9,90,000	Plant and Machinery	20,25,000	Preference Share Capital	1,50,000	Equity Shares in A (P) Ltd.	1,25,000	Securities Premium A/c	1,50,000	Preference Shares in B Ltd.	50,000	Capital Redemption Reserves	2,25,000	Debentures in C Ltd.	1,00,000	General Reserve	5,00,000	Shares in P Ltd.	2,25,000	Profit and Loss A/c	2,20,000	Capital in Z and Co.	1,00,000	Sinking Fund Reserve	1,10,000	Current Assets	55,000	Dividend Equalisation Reserve	60,000			Loan from Public Financial Institutions	10,00,000			Deposits from S Ltd	2,00,000			Current Liabilities	1,25,000			Provision for Taxation	1,00,000				38,30,000		38,30,000
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	(iv) Acquiring right shares in P Limited = Rs. 25,000 Would yours answer be different if XYZ Limited had been an infrastructure company and Mr. X the director of XYZ Limited would also have been a commanding and controlling director in ABC (P) Ltd. [8 marks] Hint: Refer Section 185 and 186 [similar questions discussed in the Class Notes too]											
Q.2.(b).	ABC Limited purchased a plot of land for establishing its plant. The said plot of land however registered in the name of one of the directors of the company. Examine the legal implications under the Companies Act, 2013. [4 marks] Hint: Refer Section 187 for investments made or held by a company in any property, security or other asset shall be made and held by it in its own name											
Q.2.(c).	Two old friends entered into a partnership for carrying on the business of buying and selling steel products. They were carrying on the business under the name and style M/s AB Steel Products Private Limited. Comment under the Companies Act, 2013 [4 marks] Hint: Refer Section 453 for Punishment for improper use of "Limited" or "Private Limited". If any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.											
Q.3.(a).	Mr. Sourabh holding 3% shares in OPQ Ltd. became a director of this company on 1-5-2015. The company, prior to his appointment as director, had commenced transactions with AKA Ltd. In the next Board meeting to be held on 10-5-2015, the Board proposes to discuss about price revisions sought for by AKA Ltd. Briefly explain: (i) Whether Mr. Sourabh should make a disclosure of his interest in AKA Ltd. assuming that the company is going to have transactions with AKA Ltd. on a continuous basis; if yes, when and how? When should it be renewed? (ii) Can he vote in the price revision resolution in the Board Meeting? You are informed that Mr. Sourabh holds 1.5% of the share capital of AKA Ltd. and that his wife holds another 3% of the share capital of AKA Ltd. [4 marks] Hint: Refer Section 184 for Disclosure of interest by director. Mr. Sourabh is required to disclose his concern or interest in the first board meeting held after his appointment as a director in OPQ Limited. He may give a general notice that he agrees to be regarded as interested in every contract which may henceforth, be entered with AKA Ltd. Such a notice is valid only for the financial year and shall expire at the end of the financial year in which it is given. It may be renewed from time to time. An interested director cannot vote on that matter, and even if he votes, his vote shall be void. Hence, Mr. Sourabh cannot vote on the resolutions related to the contract in which he is interested.											
Q.3.(b).	<table><tr><td colspan="2">ABC Limited's proposals for the Financial Year 2016-2017:</td></tr><tr><td>Net Worth 2015-2016</td><td>Rs. 1500 crores</td></tr><tr><td>Turnover 2015-2016</td><td>Rs. 2000 crores</td></tr><tr><td colspan="2">Proposal on 30.6.2016 for PQR (P) Limited, in which Mr. X, director of ABC Limited is a manager cum shareholder</td></tr><tr><td colspan="2"> 1. Purchasing of raw materials worth Rs. 90 Crores; 2. Selling of Old Building worth Rs. 120 Crores; 3. Availing consultancy for economical processing of raw materials at a fees of Rs. 25 Lakhs; 4. Appointment as sole distributor of ABC's product in the State of UP at a commission of 25% of sales affected by PQR (P) Limited. [Expected Sales for 2016-2017: Rs. 400 Crores]; 5. Miss Aanya, a relative of a Mr. X, is to be appointed as Chief Public Relations Officer on a salary of Rs. 2,75,000 per month. [12 marks] </td></tr></table>		ABC Limited's proposals for the Financial Year 2016-2017:		Net Worth 2015-2016	Rs. 1500 crores	Turnover 2015-2016	Rs. 2000 crores	Proposal on 30.6.2016 for PQR (P) Limited, in which Mr. X, director of ABC Limited is a manager cum shareholder		1. Purchasing of raw materials worth Rs. 90 Crores; 2. Selling of Old Building worth Rs. 120 Crores; 3. Availing consultancy for economical processing of raw materials at a fees of Rs. 25 Lakhs; 4. Appointment as sole distributor of ABC's product in the State of UP at a commission of 25% of sales affected by PQR (P) Limited. [Expected Sales for 2016-2017: Rs. 400 Crores]; 5. Miss Aanya, a relative of a Mr. X, is to be appointed as Chief Public Relations Officer on a salary of Rs. 2,75,000 per month. [12 marks]	
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	Hint: Refer Section 188 and Rule 15 (thereunder) for Slabs. Similar question discussed in the Class Notes too.											

Q.4.(a).	ABC Limited has a policy of providing loans to any of its employees provided that the rate of interest on loan is 10% p.a. instead of the market rate of interest rate which is 12% p.a. and the repayment tenure shall not exceed 2 years. Advise whether the following loans can be provided by the company (each one is separate alternative): (i) Personal loan to Mr. X, MD at 10% p.a. for a period of 1 year; (ii) Loan to Mr. Y, whole time director for construction of house in a posh colony; (iii) Loan to Mr. M, manager at 12% p.a. for a tenure of 2 years; (iv) Loan to Mr. Z, executive director at normal terms for the marriage of his daughter; (v) Guarantee to Yes Bank Limited for loan being taken from the Bank by Mr. X, MD of the company [4 marks] Hint: Refer provisos to Section 185. Under point (v) above, no exemption as guarantee is not covered by such proviso.
Q.4.(b).	The Board of directors of a public company in the private sector having made an average profit of Rs. 1 crore during the last 3 financial years propose to donate during the current year the following amounts: (i) Rs. 1,00,000 to a school run exclusively for the benefit of employees; (ii) Rs. 40,000 to a general charitable fund; and (iii) Rs. 4,00,000 to a political party. (iv) Rs. 4,50,000 to prime minister relief fund. Advise the Board of directors about their powers in respect of the above explaining the relevant provisions of the Companies Act, 2013 [4 marks] Hint: Refer Section 181, 182 and 183. Similar questions discussed in the Class Notes too
Q.4.(c).	The Board of directors of Stepping Stones Publications Ltd. at a meeting held on 15-1-2016 resolved to borrow a sum of Rs. 15 crores from a nationalised bank. Subsequently the said amount was received by the company. One of the directors, who opposed the said borrowing as not in the interest of the company has raised an issue that the said borrowing is outside the powers of the Board of directors. The company seeks your advice and the following data is given for your information: (i) Share capital: Rs. 5 crores (ii) Reserves and surplus: Rs. 5 crores (iii) Secured loans: Rs. 15 crores (iv) Unsecured loans: Rs. 5 crores Would yours answer be different if the Board has obtained shareholders' approval for taking such loan but infact they never obtained the loan, i.e., can shareholders now insist the Board to borrow because they already have taken the permission in pursuance whereof. [4 marks] Hint: Refer Section 180(1)(c). Similar questions discussed in the Class Notes
Q.4.(d).	Mr. X (the son of Chairman of the Company) and Mr. Y are proposed to be appointed respectively as Managing Director and Whole Time Director in ABC Limited for the financial year 2016-2017. Mrs. Z is proposed to be appointed as women cum independent director in the company. The company is located in SEZ but is having insufficient profits with an effective capital employed of less than zero. Advise about the legal implications under the Companies Act, 2013, in the following cases: i. Mr. X is aged about 18 years and he is already a director in ABC Limited; ii. Mr. Y is aged about 40 years but he resided in India for a period of only 130 days in the previous financial year preceding the date of his proposed appointment; iii. Can Mrs. Z be appointed as <i>rotational</i> additional director to give her the capacity of women cum independent director. It is to be noted that she had been a director of a producer company in preceding year whereby she vacated the office of such company for committing annual filing default. Would yours answers be different if Mr. X had been aged about 30 years and he is also proposed to be given remuneration in his professional capacity at a time when company is having insufficient profits [4 marks] Hint: Refer Section 196, 197 and Schedule V. Also refer Section 152(6). Managerial person must be resident in India unless the company is in SEZ.
Q.5.(a).	Mr. Atul, an Indian National desires to obtain Foreign Exchange for the following purposes: (i) Remittance of US Dollars 10,000 for payment for goods purchased from a party situated in Nepal. (ii) US Dollars 10,000 for remitting as commission to his agent in U.S.A for sale of Commercial plot situated near Bangalore, consideration in respect of which was received by Mr. Atul by way of foreign currency

	inward remittance amounting to US Dollars 1,00,000. Advise him, if he can get the Foreign Exchange and under what conditions for making the above remittances. Would yours answer be different if in case (ii) above, this would have been Atul and Sons (HUF). [4 marks] Hint: Refer FEMA Regulations. Similar question discussed in the Class Notes too
Q.5.(b).	Advise about various offences and remedies proceedings under FEMA. [4 marks] Hint: Refer Class Notes whereby the following is discussed: • As per section 34 of FEMA, the civil court has no jurisdiction over FEMA matters; • Under Section 13, the amount of penalty is upto 3 times the sum involved in contravention or upto Rs. 2 lacs if the aforesaid amount is not quantifiable. Further, in case of continuing contravention the penalty is upto Rs. 5,000 per day. Any currency/security/any other money/property involved in contravention <i>may</i> be confiscated by the authorities; • If the person fails to pay the penalty amount determined u/s 13 within 90 days of service of notice, then order can be passed subject to SCN, for arrest and civil imprisonment for a prescribed period [Section 14]; • Imprisonment Term u/s 14: ≤ 3 yrs, if Penalty > Rs. 1 crore; and ≤ 6 months, in other cases; • First Appeal u/s 17 to Special Director (Appeals) against penalty order under FEMA and second appeal u/s 19 for the same before the Appellate Tribunal (AT) – within 45 days of receipt of the order ; • Appeal can be filed before HC on questions of law, within 60 days (extension possible for sufficient reasons) of communication of the order from Appellate Tribunal [Section 35]; • Enforcement Directorate has the powers to carry out search and seizure operations under FEMA in the same manner as prescribed under Income Tax Act, 1961 [Section 36 to 38]
Q.5.(c).	i. Union Bank of India, a National Bank acquired on 1st January, 2016 a building, fully occupied by various tenants, from Mr. Rahul, the owner of the building, in discharge of a term loan advanced to Mr. Rahul, who had mortgaged the said building as security with the said Bank and failed to repay the loan. The said bank wants to keep the building permanently with it and earn the rent from tenants. You are required to state with reference to the provisions of the Banking Regulation Act, 1949 whether the said bank can do so. Other alternative under consideration with the Bank is to transfer such property to Asset Reconstruction Company. Can it do so. If yes, whether any stamp duty is payable by the Bank on execution of such transfer deed. Hint: Section 9 of the Banking Regulation Act, 1949 states that notwithstanding anything contained in section 6, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of this Act, whichever is later or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be: Provided that the banking company may, within the period of seven years as aforesaid, deal or trade in any such property for the purpose of facilitating the disposal thereof : Provided further that the Reserve Bank may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where it is satisfied that such extension would be in the interests of the depositors of the banking company. Section 5(1) of SARFAESI provides that notwithstanding anything contained in any agreement or any other law for the time being in force, any <i>asset reconstruction company</i> may acquire financial assets of any bank or financial institution by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them. Further Section 5(1A) provides that any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899 ii. Mr. X is a director in Punjab National Bank Limited. He is proposed to be appointed as a director in Yes Bank Limited as well as HDFC Bank Limited. Comment. Hint: No banking company incorporated in India shall have as a director in its Board of directors any person who is a director of any other banking company [Section 16] iii. PQR Limited holds 33% voting rights in ABC Bank Limited. The Board of Directors of the Bank

	comprises of total 12 directors in all, out of 4 directors are the one who are also directors in PQR Limited. Comment. [8 marks] Hint: Section 16 of the Banking Regulation Act provides that no banking company referred to in sub-section (1) shall have in its Board of directors, more than three directors who are directors of Companies which among themselves are entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders of that banking company
Q.6.(a).	ABC Limited got a contract from Singapore Government to construct highways in the country. The contract was awarded on 31.8.2016 for a value of Rs. 1500 crores. To meet the funds requirements, the company launched its IPO and raised the public proceeds for Rs. 1000 crores. The balance amount was available to the company from various other sources. After 4 months the Singapore Government varied the contract and an aggrieved company passed a special resolution to withdraw from such contract. The dissenting shareholders are now demanding the refund of the money they invested in the IPO considering the object of highways construction being mentioned in the offer document. The Company is accordingly also willing to provide the exit route to such dissenting shareholders. Advise the legal provisions to be complied with by the company in this regard under SEBI (ICDR) Regulations, 2009 (as amended). [4 marks] Hint: Refer Class Notes for SEBI (ICDR) Regulations, 2009 about Chapter VI-A Conditions And Manner Of Providing Exit Opportunity To Dissenting Shareholders
Q.6.(b).	(1). Point out the circumstances where under the following powers may be exercised by the Securities and Exchange Board of India: (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? Hint: Under section 11 of the SEBI Act, 1992 the basic duty of the SEBI is to protect the interests of investors in securities and regulate the securities market. Section 11A (1)(b) specifically empowers SEBI to prohibit any company from issuing prospectus, any offer document or advertisement soliciting money from the public for the issue of securities by general or special order if such prohibition is necessary for the purpose of protection of investors. Under section 11 of the SEBI Act, 1992 the basic duty of the SEBI is to protect the interests of investors in securities and regulate the securities market. Section 11A (1)(b) specifically empowers SEBI to prohibit any company from issuing prospectus, any offer document or advertisement soliciting money from the public for the issue of securities by general or special order if such prohibition is necessary for the purpose of protection of investors. (2). Industrial Finance Corporation of India, established under the Industrial Finance Corporation Act, 1948 having its registered office at Mumbai issued 8% Redeemable Bonds redeemable after 7 years. These bonds were issued directly to the members of the public and not through mechanism of Stock exchanges. You are required to state with reference to the provisions of Securities Contracts (Regulation) Act, 1956, whether such direct issue of bonds by the Industrial Finance Corporation of India is not violating the provisions of the said Act. [4 marks each] Hint: In order to prevent undesirable transactions in securities and to promote healthy stock market, the Securities Contracts (Regulation) Act, 1956 was enacted and all the Stock Exchanges in the country are registered under this Act. Section 40 of the Companies Act, 2013 states that offer of shares or debentures to public for subscription shall be made only after the permission of a Stock exchange. Section 28(1) of the Securities Contracts (Regulation) Act, 1956 states that the provisions of this Act shall not apply to the Government, the Reserve Bank of India, any local authority, or corporation set up by a special law or any person who has effected any transaction with or through the agency of any such authority as stated earlier. As stated in the question Industrial Finance Corporation of India is a corporation set up under the Industrial Finance Corporation Act, 1948. i.e. under a special statute enacted by the Parliament Therefore, this Corporation does not need any permission from a Stock Exchange to issue any Bond or other securities. Accordingly, it has not violated the provisions of the Securities Contracts (Regulation) Act, 1956. The nature and tenure of the Bonds are immaterial.

Q.6.(c).	What are the provisions for settlement of proceedings under SEBI Act, 1992? Also outline the powers of SEBI to attach the property and arrest the person [4 marks] Hint: Refer Section 15JB and 28A of SEBI Act, 1992 in yours Class Notes (see table given in the Chapter)							
Q.6.(d).	What is yours understanding about compounding of offences under the Companies Act, 2013? List certain non-compoundable offences under such Act. [4 marks] Hint: Refer Section 441 of the Companies Act, 2013 List of significant non compoundable offences under the Companies Act, 2013 <table><tr><td>186(13) - Default in complying with the provisions of section 186 (1) to (12).</td></tr><tr><td>447 – Punishment for fraud</td></tr><tr><td>182(4) – Political Contributions made in contravention of section 182</td></tr><tr><td>127 – Director’s failure to distribute dividends</td></tr><tr><td>337 – Penalty for defrauding creditors by officers by the company under winding up</td></tr><tr><td>338 – Liability where proper accounts not kept</td></tr><tr><td>207 – penalty for failure of director, officer, employee to produce documents/ furnish info. and expln./ render assistance during inspection and investigation</td></tr></table>	186(13) - Default in complying with the provisions of section 186 (1) to (12).	447 – Punishment for fraud	182(4) – Political Contributions made in contravention of section 182	127 – Director’s failure to distribute dividends	337 – Penalty for defrauding creditors by officers by the company under winding up	338 – Liability where proper accounts not kept	207 – penalty for failure of director, officer, employee to produce documents/ furnish info. and expln./ render assistance during inspection and investigation
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338 – Liability where proper accounts not kept								
207 – penalty for failure of director, officer, employee to produce documents/ furnish info. and expln./ render assistance during inspection and investigation								
Q.7.(a).	Messrs Ahimsa Private Limited was incorporated in the year 2001 under the Companies Act, 1956 by 3 brothers, namely, Amit, Anil and Akhlesh. 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, Amit and Anil, joined hands together to assume complete control of the company, leaving their brother, Akhlesh in lurch. Both the brothers got further shares allotted to themselves, thereby their joint shareholding increased from 66 2/3% to 90%, while the shareholding of Akhlesh got reduced from the erstwhile 33 1/3% to 10%. No notice of any Board Meeting was sent to Akhlesh, who was sidelined and was also removed as a Director. Aggrieved by the decisions taken by his two brothers at his back, Akhlesh 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 as per Companies Act, 2013. Assuming that petition of Akhlesh is being accepted by the appropriate judicial authority as aforesaid, also advise about the following: - Whether the case involved can be referred to mediation cell <i>suo motu</i> by such authority. If yes, then what is the time within which such case should be disposed off by the mediation cell; [Yes; 3 months + 3 months] - What is the recourse if any of the parties to dispute are not in agreement with the decision of the mediation cell. Can the mediation cell impose its decision upon the disputed parties; [Refer the case back to the forum; No] - If the disputed parties have agreed to the decision of the mediation cell, can at a later stage, further appeal be filed by any of the parties against such a decision [No] [6 marks] Hint: Refer Section 241 to 244 and Bhagirath Aggarwala case in yours Class Notes. Also refer Section 442 and MCP Rules discussed in the Class Notes.							
Q.7.(b).	Write a detailed note on constitution and powers of NCLT and NCLAT with specific reference to: - Right to lodge caveat; [Hint: direct theory question from NCLT chapter] - Amicus curiae [-do-]; - Rectification of mistake apparent from record [Hint: Refer Section 420]; - NCLT powers to compound offences that may involve imprisonment [Hint: Refer Section 441 and 435. i.e. such offences can be compounded with the permission from Special Court] [6 marks]							
Q.7.(c).	M/s. LMN Limited has been running in losses and has defaulted payment to its creditors. On 1-8-2016, the company mortgaged its plant and machinery to Mr. Patel, a close friend of the managing director of the company, against payment of his dues of Rs. 10 lakhs payable by the company. The other creditors were left in lurch. In the meantime, Mr. Raman (who was not paid by the company for supply of raw material of the value of Rs. 50,000) presented a petition for winding up the company before the High Court on 31-12-2016. The company was ordered to be wound up by the court on 30-4-2017. The Official Liquidator wants to declare the transaction of mortgage with Mr. Patel as invalid. Will he succeed? [4 marks] [Hint: Refer							

	Chapter of winding up. Similar question done in the Class Notes] Or ABC Limited is ordered to be wound up by the Delhi HC and hence Mr. X was appointed as official liquidator. Since the process of winding up took more than one year he was ordered by the HC to submit status report after every 2 months. Meanwhile one of the creditors of the company filed an application to Mr. X for obtaining a copy of such status report. Later on it was found that he requested the copy of report by falsely claiming to be a creditor of the company on the basis of forged invoices. The copy of report was obtained to use the information contained therein for finding out the details of onerous properties so that he can buy such properties at a negligible price. Advise what legal action can be taken against such creditor under the Companies Act, 2013. [4 marks] [Hint: Refer Chapter of winding up. Similar question done in the Class Notes] Or ABC Limited is under liquidation. The official liquidator has found that one of the company's property is worth less and the cost of selling such property itself will be more than the benefit that be derived from such sale of property. Can the liquidator avoid selling such property under Companies Act, 2013 [4 marks] [Hint: Refer Chapter of winding up. Similar question done in the Class Notes] Or (i) A meeting of members of a company ABC Co. Limited, was convened under the orders of the tribunal to consider a scheme of compromise and arrangement. The meeting was attended by 200 members holding 5,00,000 shares in aggregate. 70 members holding 4,00,000 shares voted for the scheme. The remaining members voted against the scheme. Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme is approved by the required majority. (ii) ABC Co. Ltd. was amalgamated with, and merged in XYZ Co. Ltd. Some workers of ABC Co. Ltd. refuse to join as workers of XYZ Co. Ltd. and claim compensation for premature termination of services. XYZ Co. Ltd. resists the claim on the ground that their services are transferred to XYZ Co. Ltd. by the order of amalgamation and merger and, therefore, the workers must join service of XYZ Co. Ltd. and cannot claim any compensation. State whether the workers of ABC Co. Ltd. Will succeed in their claim. Give reasons as per the provisions contained in Companies Act, 2013. [4 Marks] [Hint: Refer Chapter of Compromises, Arrangements and Amalgamations. Similar question done in the Class Notes] Or XYZ Co. Ltd. owes a sum of `5,00,000 to S, who assigns this debt to his two creditors viz. R, to an extent of `4,60,000 and M, to an extent of `40,000. M makes a demand for his money from the company by giving a legal notice. The company could not meet his (M's) demand or otherwise satisfy him till the expiry of four weeks from the date of notice. M, therefore, moves to the judicial forum with a petition for winding up of the company. Decide as per provisions of the Companies Act, 2013. [4 marks] [Hint: Refer Chapter of winding up. Similar question done in the Class Notes]
Q.8.	Write short notes (any four): [4 marks each] (i). Special Courts under PMLA; [Hint: Direct theory question already covered in the Class Notes] (ii). Default and Financial Assets – meaning thereof under SARFAESI Law; [Hint: Direct theory question already covered in the Class Notes] (iii). Paid up capital requirements for Insurance Companies; [Hint: Direct theory question already covered in the Class Notes] (iv). Competent Authority under FEMA; [Hint: Direct theory question already covered in the Class Notes. See Section 37A at the end of the Chapter] (v). Aids to Interpretation of Statutes; [Hint: Direct theory question already covered in the Class Notes. See dictation in the Class Notes]. (vi). Foreign Company through electronic mode and list of compliances to be made by such companies. [Hint: Direct theory question already covered in the Class Notes. Discuss Section 379 to 393 in summary form] Meaning of Electronic Mode: Rule 2(1)(h) of the Companies (Specification of Definitions Details) Rules, 2014 states as under : 'electronic mode' means carrying out electronically based, whether main server is installed in India or not, including, but not limited to—

	(i) business to business and business to consumer transactions, data interchange and other digital supply transactions; (ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India; (iii) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management; (iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and (v) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise. (vii). Title to dividends under SCRA, 1956 [Hint: Direct theory question already covered in the Class Notes. See Section 27 in SCRA] (viii). Minimum Subscription [Hint: Receive $\geq$ 90% of the Offer Size; Else refund whole amount of application money: a) within 15 days of the closure of the issue, if the issue is not underwritten; b) within 70 days of the closure of the issue, if the issue is underwritten] (ix). Liability for contravention of the Act, rules or the regulations and Failure to pay fine under SEBI (ICDR) Regulations, 2009: The listed entity or any other person thereof who contravenes any of the provisions of these regulations, shall, in addition to the liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s), in the manner specified in the circulars or guidelines issued by the Board: (a) imposition of fines; (b) suspension of trading; (c) freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories; (d) any other action as may be specified by the Board from time to time - Regulation 111A; If the listed entity fails to pay any fine imposed upon it by the recognised stock exchange(s), within the period as specified from time to time, the stock exchange may initiate such other action in accordance with law, after giving a notice in writing - Regulation 111B.
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New Questions on Competition Act, Winding Up and Insolvency Law

1.	Samsung Inc., India is supplying mobile phones worth Rs. 40,000 each to its various dealers across India. The dealer is supplied this phone at an amount of Rs. 30,000 each. This way the dealer would be having a margin of Rs. 10,000 per phone being sold by him. However, Samsung Inc. has entered into an agreement with some of the dealers that they shall not sell the phone at a price of more than Rs. 30,000 per phone. Such dealers are not in a position to pass on the discounts to their customers as per their business model. Advise about the validity of this agreement under the Competition Act, 2002. Hint: Anti competitive agreement on account of being in the category of resale price maintenance agreement.
2.	The petitioner claimed to hold 46 per cent of the equity share capital of the respondent company had filed the petition under the provisions of the Companies Act, 2013, alleging oppression of his shareholding rights and mismanagement in relation to the affairs of the respondent company, by the other respondents, who are stated to be presently in the management of the 1st respondent company or had been in the past, all being part of the Board. The petitioner averred that he was inducted in board of company with a false promise to effect that he would have 50 per cent holding in company. However, it transpired according to the petitioner that the respondents in the meanwhile using stolen papers and records manipulated the shareholding of the company to their favour, without his consent and knowledge. Thus, the allotment of shares, constituting 96 per cent of the share capital in the company was challenged by the petitioner, inter alia, on the ground that no board meeting was taken place. On the other hand, respondents also submitted that oppression and mismanagement petition by petitioner could not maintain as he was not a shareholder. Further, there was no agreement of 50 per cent participation by the petitioner in the company or in relation to the immovable properties purchased. In relation to allotment of shares to R2, it was contended that it was made with full knowledge and consent of the petitioner. In relation to removal of petitioner from directorship, all due compliances with law had been followed and that it was in compliance with article 5 of the article of association of the company. Advise whether the petition filed by the petitioner is maintainable at the forum. Hint: Where ex-director of company claimed to be shareholder of company failed to produce letter of allotment of shares/share certificates issued by company or share transfer forms or any transfer/transmission document to substantiate his shareholding in company oppression and mismanagement petition filed by him could not be entertained
3.	Due to general depression in the market during the years 2011 to 2013, inter alia, the Petitioner Company could not commence its operations during the said period as the same required a huge amount of capital infusion. It has been further stated that during the said period even the subscribed capital was not received from initial subscribers and, therefore, the project remained a non-starter. Additionally, it had been stated on behalf of the Petitioner Company that at the time of filing of the application for removal of its name from the Register of Companies maintained by the Respondent, the former was a completely defunct company, without any assets and liabilities. It had further been stated that there were no dues against the Petitioner-company towards income tax/sales tax/central excise, or against banks or financial institutions or any other central or state government authorities or local authorities. Consequently, the Respondent struck off the name of the Petitioner Company from the Register of Companies maintained by the Respondent. Publication in this behalf was carried out in the Official Gazette. Thereby, the Petitioner Company was dissolved without being wound up. Since then there had been a change of business environment in the country. It had been stated that because of government's special attention towards ease of doing business in the country, there were renewed excitement in the air-conditioning market and that it was expected to grow at a rapid pace of upto 12 per cent per annum. It had been further stated that the Petitioner Company was contemplating to start a manufacturing unit for manufacturing roof mounted air conditioners for railway. Advise whether the Board of Directors of the Petitioner Company can seek revival of the Petitioner Company under the Companies Act, 2013. Hint: As per section 252 of Companies Act, 2013, the company being aggrieved of its name struck off from register of companies can make an application to the Tribunal before the expiry of twenty years from the publication in the official gazette. Further the tribunal, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise, order the name of the company to be restored to register of companies. Section 252(3) further provides that the Tribunal may, by the order, give such other directions and make such provisions as deemed just for <i>placing the company and all other persons in the same</i>

	<i>position as nearly as may be as if the name of the company had not been struck off from the register of companies.</i> In the given case, the company presented an application in 2013 to registrar for removal of name under section 248 for not being able to carry out its business or operation for immediately preceding two financial years (i.e. 2011 and 2012) and also it was a completely defunct company. However, seeing the growth in the market, the company feels aggrieved and wishes its name to be restored. Therefore the BOD on behalf of the company can make an application to the tribunal within twenty years from the date of publication in the gazette.
4.	ABC Limited submitted that secured creditors had filed original petition before the Debt Recovery Tribunal in respect of the assets of the company. Multiple litigations were pending between the company and secured creditors including claims/counter claims, set offs. The secured creditors were interested in realization of dues through direct sale under SARFAESI Act. It stated that initiation of corporate insolvency resolution process was not in public interest. It was also stated that incidence of default claimed in petition would be subject-matter of adjudication before DRT. Can pendency of proceedings before DRT be a ground to reject application for initiation of insolvency proceedings under IBC 2016. Hint: pendency of proceedings before DRT cannot be a ground to reject application for initiation of insolvency proceedings under IBC 2016.
5.	The applicant invested an amount in under construction commercial space of corporate debtor. In lieu of the aforesaid investment, the Corporate debtor proposed to book a commercial space for the applicant in the aforesaid project and promised him to assist in selling the said space with an assured appreciated/escalated price/return. The applicant agreed to the terms of investment proposed and invested an amount. However, the corporate debtor failed to fulfil its commitment. It had neither completed the construction nor could make an appreciated/escalated price/return upon the aforesaid investment. Consequently, the applicant requested the Corporate debtor to refund the amount along with interest forthwith. Can the applicant file petition for initiation of corporate insolvency resolution process under IBC 2016. Hint: Where applicant made investment in commercial space constructed by real estate company, applicant could not be 'treated as operational creditor as debt in question had not arisen out of sale of any goods or services and hence petition is not admissible. Special cautionary note for students: Where infrastructure company raised amount from appellant buyers by way of sale-purchase agreement in respect of units and had agreed to pay committed returns to appellant but defaulted in payment, appellant would be 'financial creditor'
6.	Mr. X an operational creditor sent a notice of demand for recovering overdue debt from ABC Limited. Pursuant to such notice, ABC Limited bring to his notice that the aforesaid dues are withheld because of the breach of contract on his part. Can Mr. X approach NCLT under IBC, 2016 for recovery of his dues. Hint: The application for initiating the Insolvency resolution process by operational creditor can be made to Adjudicating authority if after 10 days from the delivery of notice/ demand notice to Corporate debtor, the creditor has not received any payment or "notice of dispute". If it is proved that amount is under dispute then his application can be rejected. Further, the petition once filed can be withdrawn only before its admission at NCLT.
7.	Define the following in terms of IBC, 2016: (i) Financial creditor (ii) Operational creditor (iii) Corporate Person and Corporate Applicant (iv) Debt (v) Information Utility (vi) Insolvency Professional (vii) Insolvency and Bankruptcy Board of India (viii) CIRP and who cannot file application for CIRP Hint: (i) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to; (ii) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred; (iii) "corporate person" means a company as defined in the Companies Act, 2013, a limited liability partnership, as defined in the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability

	under any law for the time being in force but shall not include any financial service provider; "corporate applicant" means — (a) corporate debtor; or (b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or (c) an individual who is in charge of managing the operations and resources of the corporate debtor; or (d) a person who has the control and supervision over the financial affairs of the corporate debtor (iv) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt; (v) to (viii). Refer class notes
8.	ABC Limited is not carrying on any business or operation for a period of two immediately preceding financial years. The RoC sent a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents. In such representation the RoC observed that the company has made an application within such period for obtaining the status of a dormant company under section 455. Can he (Roc) remove the name of company from the register of companies under the provisions of the Companies Act, 2013. Hint: No, he cannot remove the name of ABC Limited from register of companies - refer section 248 in yours class notes

See Next Page too

Important Points to be kept in mind for May 2018 Examination:

1. MCA's has taken a view that sec. 164(2) leads to an immediate vacation of office in **all** companies where there the person, holding office of a director of a company attracting the offence of sec.164 2) - refer MCA Website for notice regarding striking off the names of the companies and disqualifications of directors resulted therefrom; However, the Report of Companies Law Committee dated February 2016 submitted to Union Minister of Finance, Corporate Affairs and I&B, prima facie opined that scope of disqualification of directors of companies under Rule 14 of Companies (Appointment and Qualification of Directors) Rules, 2014, for rectifying defect in filing annual return is required to be restricted to defaulting company only and not with respect to other companies - *Dr. Reddy's Research Foundation v. Ministry of Corporate Affairs [High Court of Andhra Pradesh and Telangana]*;
2. It shall be lawful for the holder of any security whose name appears on the books of the company issuing the said security to receive and retain any dividend declared by the company in respect thereof for any year, notwithstanding that the said security has already been transferred by him for consideration, unless the transferee who claims the dividend from the transferor has lodged the security and all other documents relating to the transfer which may be required by the company with the company for being registered in his name within fifteen days of the date on which the dividend became due - refer Section 27 of SCRA, 1956;