

GENERAL INSTRUCTIONS TO CANDIDATES

1. The question paper comprises two parts, Part I and Part II.
2. Part I comprises Multiple Choice Questions (MCQs).
3. Part II comprises questions which require descriptive type answers.
4. Ensure that you receive the question paper relating to both the parts. If you have not received both, bring it to the notice of the invigilator.
5. Answers to Questions in Part I are to be marked on the OMR answer sheet only. Answers to questions in Part II are to be written on the descriptive type answer book. Answers to MCQs if written in the descriptive type answer book, will not be evaluated.
6. OMR answer sheet will be in English only for all candidates, including for Hindi medium candidates.
7. The bar coded sticker provided in the attendance register, is to be affixed only on the descriptive type answer book. No bar code sticker is to be affixed on the OMR answer sheet.
8. You will be allowed to leave the examination hall only after the conclusion of the examination. If you have completed the paper before time, remain in your seat till the conclusion of the exam.
9. Duration of the examination is 3 hours. You will be required to submit (a) Part I of the question paper containing MCQs, (b) OMR answer sheet thereon and (c) the answer book of descriptive type answer book to the invigilator before leaving the exam hall, at the conclusion of the exam.
10. The invigilator will give you acknowledgement on Page 2 of the admit card, upon receipt of the above-mentioned items.
11. Candidate found copying or receiving or giving any help or defying instructions of the invigilators will be expelled from the examination and will also be liable for further punitive action.

PART – II

70 marks

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

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PART – II

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(A) You are a leading Chartered Accountant advising corporates covering various aspects *inter alia* on corporate and economic laws, corporate tax and related matters with excellent articulation skills and is a much sought after professional on the Board of many reputed Companies. Recently, you have been approached by Dash Board Ltd., a loss making company seeking your advice on the validity of the appointment of Mr. 'X', a turnaround specialist, as the Whole Time Director of the Company w.e.f. 01.01.2020 on which date he would be above 70 years of age. You were further informed that at the extraordinary general meeting of the Company held on 15.03.2020, the shareholders have not passed a special resolution with regard to the appointment of Mr. 'X' but the votes cast in favour of the motion exceeded the votes cast against the motion. The Company has provided you the following inputs extracted from the latest audited Balance Sheet as at 31st March, 2020.

S. No.	Particulars	Amount (₹ In Crores)
1.	Authorized Equity Share Capital	1,560
2.	Paid Up Equity Share Capital	860
3.	Share Application Money Account (Company is in process of Follow on Public Issue (FPO))	60
4.	Reserves and Surplus (including General Reserve – 600 & Revaluation Reserve – 80)	680
5.	Long Term Borrowings	800
6.	Investments	160
7.	Accumulated Losses	40

On the basis of the above facts and figures, Dash Board Ltd. seeks your advice in respect of the following under the provisions of the Companies Act, 2013.

- (i) Validity of the appointment of Mr. 'X' as Whole Time Director.
- (ii) Compute the effective capital for payment of managerial remuneration.
- (iii) As the Company is running in losses, state the maximum amount of remuneration that can be paid on yearly basis to each Managerial person other than a managerial personnel functioning in a professional capacity.
- (iv) How is the remuneration payable to a Whole Time Director determined ?

(B) Apex Ltd. is an unlisted Public Company and having 10 Directors on its Board. At a duly convened meeting of the Board of Directors of the Company held on 14th August, 2020, it was proposed to approve entering into contracts or arrangements with 'E Limited' and 'Q and Associates', a partnership firm. Mr. Y and his spouse hold 2% and 1% shareholding respectively in E Limited. Mrs. Z, spouse of Mr. Z is a partner in Q and Associates. Mr. Y and Mr. Z are the Directors of Apex Limited. The board meeting was attended by five directors including Mr. Y and Mr. Z. All the directors participated in the discussions and voted infavor of the resolution except Mr. Y. The contracts were approved. However, Mr. Y and Mr. Z disclosed their respective interests in the contracts. The earlier Board Meeting was held on 25th May, 2020. In the light of the provisions of the Companies Act, 2013 (the Act), examine the following :

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- (i) Whether the Board Meeting that was held and the transactions therewith are within the provisions of the Act ?

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- (ii) Under what circumstances any arrangement entered into by the Company in violation of Section 192 of the Companies Act, 2013 dealing with non-cash transactions involving directors shall not be held voidable ?

2. (A) Investigation proceeding under the provisions of the Companies Act, 2013 is being carried out against Fishy Ltd. During the investigation, the Tribunal has a reasonable ground to believe that a removal, transfer or disposal of funds, assets or properties of the Company is likely to take place in a manner that would be prejudicial to the interests of the Company. In this connection, the Tribunal requested the Company's legal advisers and the Bankers respectively to disclose and furnish a copy of the communication made by them to the Company. But they refused to disclose any information. Under the circumstances, the Tribunal wishes to pass an order to :

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- (i) Freeze the assets of the Company.
- (ii) Punish the Company for the contravention, if any of the order of Tribunal.
- (iii) Compel the legal advisers and the bankers to provide the required information.

In the light of the provisions of the Companies Act, 2013 analyse whether the Tribunal has the power to do so in respect of the above situations.

(B) Fifteen members of KUN Limited holding fifteen percent paid-up share capital (who have paid all calls and other sums due on their shares) of the company applied to the Tribunal under Section 241 of the Companies Act, 2013 for relief from oppression on the ground that the affairs of the company are being conducted in a manner prejudicial to their interest. The Tribunal admitted the application and upon enquiry found the allegation to be genuine. There upon the Tribunal on 1st October, 2020, ordered for termination of Mr. BAP, the Managing Director of the company, with immediate effect. Mr. BAP was appointed as the Managing Director of the company for a period of five years with effect from 1st April, 2017 having a clause in his letter of appointment that he would be entitled for compensation for the remaining period; in case his services are terminated by the company before expiry of his stipulated term of service. Mr. BAP claimed compensation for the remaining term of one and half year. KUN Limited denied to pay the compensation; but offered him to re-assume his office again after lapse of a period of three years from 1st October, 2020. Referring to and analyzing the relevant provisions of the Companies Act, 2013, decide, whether the claim of Mr. BAP is tenable and proposal of KUN Limited is valid.

(C) GOGU Limited, a resident company in India, has achieved a turnover of ₹ 20,000 crore during the financial year 2019-20. The paid-up share capital and Free Reserves of the company as on 31st March, 2020 as per the audited financial statements was ₹ 1500 crore and ₹ 500 crore

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respectively. The company is planning to make an investment INR 7800 crore in an Overseas Joint Venture in Singapore. The company approached you whether it can make the desired investment under the terms of automatic route for direct investment during the financial year 2020-21. The equivalent currency in US \$ comes to around USD 1.05 billion. Referring to the Foreign Exchange Management (Transfer of Issue of Any Foreign Security) (Amendment) Regulations, 2004 and notifications issued by the Reserve Bank of India, decide whether there is any restriction in the above investment.

- (D) Good Heart Limited had borrowed ₹ 15 crore from XYZ Bank Limited and ₹ 25 crore from AB Bank Limited by providing appropriate security. Good Heart Limited could not pay the dues of the bankers due to recession in business. Consequently, XYZ Bank Limited and AB Bank Limited took over the management of Good Heart Limited. After managing the business for some months, the bankers were successful in realizing their dues from the business of Good Heart Limited. By that time, the bankers had converted part of the debts of Good Heart Limited into equity shares of the company and thereby had acquired controlling interest in Good Heart Limited. Referring to and analyzing the relevant provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, decide whether XYZ Bank Limited and AB Bank Limited are obliged to restore the management of the business to Good Heart Limited.

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3. (A) Analyse under the provisions of the Companies Act, 2013, whether the following Companies can be considered as a Foreign Company :

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- (i) A Company incorporated outside India and registered in Moscow, Russia has installed its main server in Moscow for maintaining office automation software by cloud computing for its client in India.
- (ii) A Company which is incorporated outside India employs agents in India but has no place of business in India.
- (iii) A Company incorporated outside India and registered in Australia has authorized Mr. X in India to source customers and subsequently to enter into contracts with them on behalf of the Company.
- (iv) A Company incorporated outside India and is registered in Mauritius. All the business models, financial strategy, important decisions are carried taken out at the Board Meetings held only in India.

(B) Phil Heath Systems Incorporated (PHSI), is a foreign Company registered in Australia and has established a place of business in India. The financial statements pertaining to the Indian business operations for the year ended 31st March, 2020 were prepared by the Company. Referring to the provisions of the Companies Act, 2013, advise the Company on the following matters :

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- (i) Whether the accounts of the Company pertaining to Indian business operations shall be audited ? If yes, by whom ?

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- (ii) What is the due date for filing the audited financial statements with the Registrar of Companies (RoC) ?
- (iii) What is the effect of the contracts entered by an Indian Company with PHSI in case PHSI has not filed financial statements with the RoC ?
- (iv) In which e-form and within what period, the annual return of the Indian operations of the foreign company shall be filed with the Registrar of Companies ?

(C) By means of an order in writing, the Adjudicating Authority (AA) appointed under the Prevention of Money Laundering Act, 2002 attached certain properties under Section 8 of the Act belonging to Mr. AAA alleged to be involved in money laundering. Aggrieved by the order of the AA, Mr. AAA preferred an appeal before the Appellate Tribunal (AT). Subsequently, after proper hearing, an order was passed by the AT upholding the decision of the AA. Aggrieved by the order of the AT, Mr. AAA preferred a further appeal before the Honorable High Court. During the pendency of the appeal before the High Court, unfortunately, Mr. AAA dies. In the light of the provisions of the Prevention of Money Laundering Act, 2002 :

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- (i) What is the time limit for preferring an appeal before the High Court against the order of the AT ?
- (ii) By how many days an extension of time can be sought if the appellant was prevented by sufficient cause from filing the appeal within the said period ?

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- (iii) On the death of Mr. AAA can the appeal be further continued in the High Court? If so, by whom?
- (iv) What will be the position if Mr. AAA dies before appeal has been preferred in the Honorable High Court?
- (v) What shall be the jurisdiction of the High Court, if the Central Government is the aggrieved party?

4. (A) Securities and Exchange Board of India (SEBI) in the interest of trade has amended the bye-laws of the ROS Stock Exchange, by written order, specifying the reasons there for, ordered for amendment of the bye-laws of ROS Stock Exchange Limited immediately. Aggrieved of the said order of the SEBI, ROS Stock Exchange Limited seeks your advice whether the act of the SEBI is tenable since such amendment was neither published in the Official Gazette of India nor in the Official Gazette of the state in which the Stock Exchange is situated. Referring to and analyzing the relevant provisions of the Securities Contract (Regulation) Act, 1956, advise the Stock Exchange.

(B) Grow Well Limited, a public company (Not a Section 8 Company) has recently been listed. The promoters of the company are individuals only. It has 12 directors in its Board. The company approached you seeking your advice regarding the following as per the circumstances stated below.

- (i) What should be the optimum combination of executive and non-executive directors?

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- (ii) What should be the minimum number of independent directors in case the chairperson of the board of directors is a non-executive director ?
- (iii) What should be the minimum number of independent directors in case the company does not have a regular non-executive chairperson ?
- (iv) What should be the minimum number of independent directors in case where the regular non-executive chairperson is a promoter of Grow Well Limited or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors ?

Referring to the relevant regulation of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, advise the company on the above matters.

- (C) Bharat Sevak, an NGO granted a certificate of registration to receive foreign contribution in terms of the provisions of the Foreign Contribution (Regulation) Act, 2010. The organization intends to invest some of the contribution amount in some mutual funds, which is projected to give good results and thereby strengthening the financial position of the organization. Bharat Sevak is also planning to defray around 65% of the amount of foreign contribution received towards administrative expenses. Advise the organization in the light of the provisions of the Foreign Contribution (Regulation) Act, 2010, whether it can give effect to the above two proposals.

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(D) By virtue of the arbitration agreement between Mr. C and Mr. P, a matter between them which could not be resolved smoothly, was referred to the arbitrator tribunal having three arbitrators. Two among the arbitrators were of the opinion that Mr. C has to pay a compensation of ₹ 2 crore to Mr. P. The third arbitrator was of the opinion that Mr. P is not eligible to get any compensation from Mr. C. The award was then written and signed by the first two arbitrators, while the third arbitrator refused to sign. The fact that the third arbitrator refused to sign and the reason behind that was stated in the award. Mr. C contended that since all the arbitrators did not sign, the award is invalid. In the light of the provisions of the Arbitration and Conciliation Act, 1996, decide, whether the contention of Mr. C is tenable ?

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5. (A) In the capacity of an Adjudicating officer, the Registrar passed an order against IDLE Limited, a listed company, for not following some provisions of the Companies Act, 2013. Being aggrieved of the order of the Adjudicating officer, IDLE Limited proceeded to the Tribunal. The Tribunal after giving both the parties an opportunity of being heard upheld the order of the Adjudicating authority in a modified manner. After lapse of a period of one year and five days, the Tribunal with a view to rectify a mistake apparent from the record, amended the order passed by him earlier, when the mistake was brought to his notice by the Adjudicating officer. IDLE Limited approached you and contended that the stipulated period of 3 months within which the

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order should be passed by the Tribunal is already over; even the delay period has exceeded the maximum allowed condonation period of 90 days and therefore the order passed by the Tribunal cannot be revised. Referring to and analyzing the relevant provisions of the Companies Act, 2013, advise IDLE Limited whether its contention is tenable. Will your answer differ if IDLE Limited has already preferred an appeal against the original order of the Tribunal before the amendment was made by the Tribunal ?

- (B) After discontinuing business operations for two financial years, the directors and other persons in charge of the management of CDR Limited with the intention of evading some liabilities of the company, made an application to the Registrar for removal of its name. The Registrar scrutinised the documents and allowed the name of the company to be removed from the Registrar of Companies. A group of persons, who had supplied goods to the company and were not paid off, incurred loss as a result of removal of the name of the company and were aggrieved of the above action. They approached you for your advice whether they will succeed to claim their dues from anybody and whether the persons in charge of the management of the company shall be considered as guilty by any means. Referring to the provisions of the Companies Act, 2013, advise them.

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(C) As at 31st March, 2020, XYZ Limited had the following debts :

Creditors Name	Nature of Debt	Amount (INR in Lakhs)
A	Financial Debt	200
B	Financial Debt	250
C	Financial Debt (Related Party) – Not Regulated by the Financial Sector Regulator.	150
D	Operational Debt	150
E	Operational Debt	250
	Total	1000

Due to impact of heavy losses and liquidity crunch, XYZ Limited could not pay the above debts. Since the debts were overdue for a long time, creditor A filed an application with the Adjudicating Authority (NCLT) to initiate a Corporate Insolvency Resolution Process against XYZ Limited and the application was accepted. Stating the provisions of The Insolvency and Bankruptcy Code, 2016 answer the following with reference to the above financial data :

- Who will all form part of the Committee of Creditors ('CoC') from the above list of Creditors ?
- Whether the above Operational Creditors have a right to vote in CoC Meeting ?
- What is the compulsory agenda to be discussed in the first meeting of CoC ?
- What shall be the quorum of the CoC meeting if it is conducted through video conferencing ?

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- 1) opp & min mgt - members limit
- 2) M/d hr company - FEMA
- 3) SEBI - Officer's time limit
- 4) CG cannot assign to SFO (14)

- 5) Amalgamation by CG order
- 6) winding up - workman dues
- 7) Tribunal - period of limitation
- 8) Sec 816 - contravention

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6. (A) Mrs. Anjana is a director of Unique Ltd., a professionally managed, profit making, dividend paying Company. The said company is having sufficient liquid funds and are remaining idle as of now. With a view to deploy the idle funds, the Company proposes to provide either loans or invest in the shares of other companies or both. Considering this the Board of Directors delegate the powers to the Managing Director to invest upto 15% of the paid-up capital without passing a special resolution.

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In the light of Companies Act, 2013 analyze whether the action of board is correct ?

(OR)

Ms. Jai Shvitha is a qualified Chartered Accountant and is known for her in-depth knowledge of Corporate and Economic Laws. She is a Woman Director in PQR Ltd. Due to her tight pre-occupation, she could not attend any Board Meetings of the Company held for a period of 12 months though she has taken leave of absence. Despite the fact that though under Section 167(1)(b) of the Companies Act, 2013 her office of directorship gets vacated, nevertheless, due to her professional competency:

- (i) The Board of PQR Ltd. wants to keep Ms. Jai Shvitha's Directorship in the Company and hence proposes to waive the event of absence and/or condone her absence from attending Board meetings.
 - (ii) Ms. Jai Shvitha also wants to keep the Directorship in PQR Ltd.
- In the light of the relevant provisions of the Companies Act, 2013, analyse the above situations and advise the Board on the course of action that they can adopt.

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- ⑨ OPPE Min MGL - members limit
 ⑩ SCRA, 1956 - Suspension time limit
 ⑪ SEBT, (LORD) - NRC - limit
 ⑫ unused foreign exchange - Remission. (15)

- ⑬ Appeal under SARFESI
 14, 15, 16 → Director's Interest
 17 → SSD limit
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(B) There are 7 directors in BUI Limited. A resolution (relating to opening of a branch office of the company in a place outside the state where the registered office is situated) in draft together with necessary papers were circulated among the directors seeking their approval by circulation. Four directors from among total seven directors approved the proposal. Three directors, who did not approve the proposal, opposed the validity of the proposal on the following grounds :

- (i) That the resolution was circulated by e-mail and not by hand delivery or post or courier as per the provisions of sub-section (1) of Section 175 of the Companies Act, 2013; and
- (ii) Secondly, that more than $1/3^{\text{rd}}$ of the number of directors now require that the resolution must be decided at a meeting of the Board of Directors and not by circulation.

Referring to and analyzing the relevant provisions of the Companies Act, 2013 and Rules made there under, decide, whether the contention of the three directors is tenable.

(C) SSG Bank Limited has recently started its operations. The bank approached you for your advice regarding the maintenance of records as a reporting entity in terms of the provisions of the Prevention of Money Laundering Act, 2002. Referring to and analyzing the relevant provisions of the Prevention of Money Laundering Act, 2002, advice the Bank.

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(D) Omega Limited is undergoing a Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 (IBC Code, 2016). Mr. Ravi was appointed as the Resolution Professional. On perusal of the books of accounts of Omega Limited, Mr. Ravi noted a few undervalued transactions had taken place during a period of six months preceding the insolvency commencement date. However, despite having sufficient information, he did not report such transactions to the Adjudicating Authority. Now, the members of Corporate Debtors propose to make an application to the Adjudicating Authority to report the undervalued transactions. Referring to the provisions of IBC Code, 2016, answer the following :-

- (i) Whether the members of Corporate Debtors have a legal right to do so ?
 - (ii) What orders the Adjudicating Authority can pass in such a situation ?
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