

## GFR2

Roll No. ....

Total No. of Printed Pages – 12

Total No. of Questions – 6

Maximum Marks – 70

### 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 exam. If you have completed the paper before time, remain in your seat till the conclusion of the exam.
9. Duration of the examination is 3 hours. You will be required to submit (a) Part I of the question paper containing MCQs, (b) OMR answer sheet thereon and (c) the answer book in respect of descriptive type answer book to the invigilator before leaving the exam hall, after the conclusion of the exam.
10. The invigilator will give you acknowledgement on Page 2 of the admit card, upon receipt of the above-mentioned items.
11. Candidate found copying or receiving or giving any help or defying instructions of the invigilators will be expelled from the examination and will also be liable for further punitive action.

### PART – II

70 marks

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

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**PART – II**

1. (a) Innovative Intelligence Limited, a listed Company proposes to pay the following managerial remuneration : 4

- (i) Commission at the rate of five percent of the net profits to its Managing Director, Mr. Sharma.
- (ii) The directors other than the Managing Director are proposed to be paid a monthly remuneration of ₹ 2,50,000 and also commission at the rate of one percent of the net profits of the Company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the Company. The commission is to be distributed equally among all the directors.

You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals.

- (b) The Board of Directors of the UN Ltd., which is an MNC, comprising of directors who are Indian as well as of Foreign Nationals. Mr. X, who is a Director on the Board is very often on business tour abroad. He approached you, being legal expert of the Company, to know the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors. 4

Examine the following situations and advise, Mr. X suitably as per the provisions of the Companies Act, 2013.

- (i) Number of directors for which a person, say Mr. Y can be appointed as an Alternate Director.
- (ii) If Mr. Y is appointed as an alternate director in place of a director whose term is indefinite, then, what will be the tenure of Mr. Y ?

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(c) The Board of Directors of Blackstone Ltd. (BL) made the following appointments at its meeting held on 1<sup>st</sup> January, 2021 : 6

- (i) Mr. Amir, a Director of its subsidiary Company, namely, Black Ruby Ltd., was appointed as General Manager on a consolidated salary of ₹ 1,75,000 per month with effect from 1<sup>st</sup> January, 2021.
- (ii) Mr. Kumar was appointed as the Production Manager on a consolidated salary of ₹ 1,50,000 per month with effect from 1<sup>st</sup> January, 2021.
- (iii) Mr. Pratap, a relative of Mr. Kumar was appointed as a Director of BL on 1<sup>st</sup> April 2021.

In the light of the provisions of the Companies Act, 2013, critically examine the following :

- (A) Whether the appointment of Mr. Amir require the approval of the shareholders of BL at a general meeting ?
- (B) Does the appointment of Mr. Pratap as a Director of BL affect the continuation of Mr. Kumar as the Production Manager ?

2. (a) A group of members of XYZ Ltd. made a complaint to the Registrar of Companies alleging that the management of the Company is indulging in destruction and falsification of the records of the Company. Decide the liability of the person for commission of the following acts during the course of inspection, inquiry or investigation under the Companies Act, 2013 : 4

- (i) Mr. B who is required to make statement during the course of investigation pending against its Company, is a party to the manipulation of documents related to the transfer of securities and name of shareholders in the Register of Members of the Company.

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**P.T.O.**

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- (ii) Mr. N, an employee of the Company posted in social media that the Company was making profits so as to influence probable investors, when on the contrary, the Company was incurring losses.
- (b) The shareholders and creditors of XYZ Limited, in a meeting convened for approval of a scheme of reconstruction of the Company, passed the necessary resolutions. The scheme of reconstruction provided for the following :
- (i) Sale of plant and machineries and appropriation of proceeds for payment of outstanding wages, tax dues and repayment of loan.
- (ii) Unsecured creditors to forego 60% of their claims against the Company and receive debentures of the balance amount. A few shareholders and creditors raised objections against the said arrangements.

Advise the directors about the steps to be taken by the Company to give effect to the scheme of reconstruction under the Companies Act, 2013.

- (c) Mr. Joe, a resident in India obtained an External Commercial Borrowing of \$ 25,000 from a foreign lender on a collateral charge of his residential property in India. Mr. Joe, however, could not repay the loan and the lender prefers the property charged to be sold in India to any person (resident in India or not) and repatriate the sale proceeds to him. You are required to provide the correct legal position to the above situation in the light of the provisions of the Foreign Exchange Management Act, 1999 and Rules made thereunder.

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- (d) An Asset Reconstruction Company (ARC) took over the management of the affairs of RSK Limited in order to realise its secured assets. On the contrary, the borrower Company being aggrieved by its measures requested the ARC not to appoint any manager or administrator for the said purpose. The ARC rejected the proposal and communicated its decision of rejection of the request to RSK limited. Now RSK Limited wants to approach the Debts Recovery Tribunal against the order of the ARC. Analyse and advise the further course of action as per the provisions of the SARFAESI Act, 2002. 3

3. (a) The Central Government is contemplating trial of a certain offence committee by TT Limited under the Companies Act, 2013. The said offence is punishable with an imprisonment of two years or more and a police report on the facts of the case has been prepared. Further, the said offence can be charged under the Code of Criminal Procedure, 1973. In the given scenario, outline a legal note as to how the trial of offences would proceed for prosecution and the Court jurisdiction in which the trial of offences would take place ? 4

- (b) MNO Ltd., a foreign Joint Venture Company having its established place of business in India and following International Financial Reporting Standards (IFRS) and its financial statement being prepared in German language desires to know the following with regard to submission of its financial statements to the Registrar of Companies in India. Its area office is located at Mumbai : 4

- (i) Submission of financial statements in German Language;
- (ii) Format of financial statements as per IFRS;
- (iii) How authentication of its financial statements is to be done ?
- (iv) Whether the documents can be submitted at the Registrar's office at Mumbai ?

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**P.T.O.**

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- (c) The declared suspect, Mr. SP, was facing charges under the Prevention of Money Laundering Act, 2002. Mr. SP died in the midst of the proceedings. What shall happen to the confiscated property under the Act and whether a claimant with a legitimate interest in the property and suffered a loss is entitled for claim. 3
- (d) Mr. D was given an offer by a Company vendor Mr. TR that if he discloses him confidential data of the Company HNI Ltd. in which he was working as an Accounts executive, Mr. TR will pay him a huge sum of money. Mr. D accessed the computer of his Executive Director and passed on the confidential information of Company to Mr. TR in return of huge sum of money. Examine and analyse the situation and conclude whether Mr. D will be held liable under the Prevention of Money Laundering Act, 2002 ? 3

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4. (a) Mr. Vinod is a member of a recognised stock exchange in India for several years. The stock exchange called for a meeting on a certain date during business hours and Mr. Vinod expressed his inability to attend the meeting due to his prior unavoidable commitments outside of the station. Nevertheless, he does not want to miss the opportunity of missing some of the important items in the Agenda of the meeting as well as wants to cast his vote. Because of his inability to attend the said meeting, he is contemplating appointing his proxy for the meeting and vest power to his proxy to cast vote on his behalf. Is there any restriction in this regard as per the provisions of the Securities Contract (Regulation) Act, 1956 and SCR Rules, 1957 made thereunder ? Advise Mr. Vinod accordingly. 4

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**GFR2**

- (b) Mr. Kapoor, a market intermediary was found alleged to have violated certain conditions under the provisions of the SEBI Act, 1992. The SEBI is contemplating action on the intermediary and asked for submission of certain details. Mr. Kapoor submitted the required details with a full and true disclosure in respect of the alleged violation and the Central Government wants to grant him immunity in the said circumstances. SEBI is however of the view that immunity cannot be granted and wants to prosecute Mr. Kapoor by carrying out an investigation. Examine as to how the matter will be resolved under the provisions of the SEBI Act, 1992 ? 4
- (c) Mr. Robin has received foreign contribution under the Foreign Contribution Regulation Act, 2010 (FCRA) and wants to utilize the amount for the administrative purposes and also to make investment in Gold Deposit Scheme of a private entity. Advise Mr. Robin in the light of the provisions of the FCRA, 2010. 3
- (d) A foreign company, XJD Ltd. was established by few Indians in South America. The management of the company used to donate a huge amount to the religious trust, in Mumbai, India. In the light of the Foreign Contribution and Regulation Act, 2010 examine : 3
- (i) Whether the donations so made by XJD Ltd. is a foreign contribution ?
- (ii) Is the acceptance of such donation by the religious trust valid ?
5. (a) OTP Limited was ordered to be wound up by the Tribunal. A provisional liquidator for the purpose was appointed. Despite the same, some parties want to pursue certain legal proceedings against the Company. The Company contends that on winding up order being passed, all suits and other legal proceedings come to an end. Advise the parties as per the relevant provisions relating to winding up as contained in the Companies, Act, 2013. 4

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**P.T.O.**



- (b) Two groups of shareholders in a Company complained to the Registrar regarding the conduct and state of affairs of the company and accordingly, the proceedings of the case are before the Tribunal. Since the proceedings in the case is taking a long time, the shareholders approached you to advise alternative resolution of disputes outside the regulatory jurisdiction and also the time frame by which the proceedings can be completed. They also have a doubt that after hearing the final verdict, whether it will be binding on them and whether it can be referred to the next level of Court. You are requested to suitably advise as per the provisions of the Companies Act, 2013. 4
- (c) Mr. J was proposed to be appointed as a resolution professional for the Corporate Insolvency Resolution Process (CIRP) initiated against BMR Ltd. Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. J is a partner. In the light of the given facts, examine whether Mr. J is eligible for appointment as Resolution Professional for the conduct of the CIRP as per the Insolvency and Bankruptcy Code, 2016? 3
- (d) Committee of creditors of XYZ Ltd. (Corporate Debtor) consists of financial creditors of ₹ 245 crore and operational creditors of ₹ 25 crore. They appointed a resolution professional Mr. P in their first meeting held on 5<sup>th</sup> Sep. 2020. Resolution professional issued a notice for a meeting to be held on 10<sup>th</sup> November to approve a resolution plan with respect to management of affairs of company but notice was not given to operational creditors. Meeting was conducted on 10<sup>th</sup> November and resolution plan was approved by committee of creditors by not less than 75% of financial creditors. Referring to the provisions of the Insolvency and Bankruptcy Code, 2016, examine : 3
- (i) whether meeting was valid as notice was not given to operational creditors ?
- (ii) whether resolution plan approved will be binding on all creditors and the corporate debtor ?



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6. (a) The composition of the Board of Directors of XYZ Limited, an unlisted public company, consists of 8 directors. Mr. Amir, one of the non executive directors of the company, is a resident of Singapore and therefore, has registered his address in Singapore with the Company for communication and record purposes. The Articles of Association of the Company confers approval of the Board of Directors for promoting eligible person to the coveted position of General Manager in any stream of the organization. Accordingly, a draft Board resolution for promoting Mr. Amrish as General Manager (Finance) with effect from the date of approval by the Board has been initiated on 1<sup>st</sup> March 2021 and except Mr. Amir, it was circulated to 3 directors by hand delivery through a special messenger, 2 directors by courier, 2 directors by email. The draft resolution was approved by four directors on March 5, 2021, two directors on March 7, 2021 and finally by the Chairman of the Board on March 10, 2021. In the light of the provisions of the Companies Act, 2013 (the Act) examine and decide the following :

- (i) What shall be the date of approval of the Board for giving effect to the promotion order of Mr. Amrish ?
- (ii) Is there any violation of the provisions of the Act in not circulating the draft resolution to Mr. Amrish ?

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PQR Limited, incorporated on 1<sup>st</sup> April, 2016, an unlisted Public Company has provided the following data from its audited financial statements. (₹ in crore)

| Financial Year | Paid up share capital as on 31 <sup>st</sup> March | Turnover for the year ended | Aggregate of outstanding loans, debentures and deposits as on 31 <sup>st</sup> March |
|----------------|----------------------------------------------------|-----------------------------|--------------------------------------------------------------------------------------|
| 2016-17        | 5                                                  | 100                         | 60                                                                                   |
| 2017-18        | 5                                                  | 110                         | 55                                                                                   |
| 2018-19        | 7                                                  | 95                          | 50                                                                                   |
| 2019-20        | 7                                                  | 90                          | 45                                                                                   |
| 2020-21        | 7                                                  | 75                          | 40                                                                                   |

During the FY 2021-21, the liquidity of the Company was highly affected due to closure of the business on account of Covid-19 pandemic. The aggregate outstanding loans, debentures and deposits increased from ₹ 45 crore as on 31<sup>st</sup> March 2020 to ₹ 60 crore as on 30<sup>th</sup> September 2020 and dropped down to ₹ 40 crore as on 31<sup>st</sup> March 2021. There was no such increase in the aggregate of outstanding loans, debentures and deposits during the earlier financial years. PQR Limited, which was obligated to constitute an Audit Committee in the Financial Year 2017-18 decided to dismantle it in the FY 2021-22. Now, taking into account the above inputs and in the light of the provisions of the Companies Act, 2013 (the Act) examine :

- Whether the company has complied with the provisions of the Act and the rules made thereunder in dismantling the Audit Committee ?
- What will be your answer in case PQR Limited is a subsidiary of RST Limited, a listed entity ?

(11)

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- (b) As on 31-3-2021, Mr. K. Muthusamy is holding directorship in 4 listed Companies, 4 unlisted Public Companies and 4 Private Limited Companies. He has obtained two Director Identification Number (DINs) allotted to him inadvertently. Out of the 12 directorships, he holds 10 with the DIN allotted to him first and the rest with the DIN allotted to him later. He wants to surrender one of his DINs, but to keep all his 12 Directorships. In the light of the relevant provisions of the Companies Act, 2013, examine the following :
- (i) Which DIN sourced by Mr. K. Muthusamy be surrendered ?
- (ii) What procedure he needs to follow and what actions will be done by the Central Government in this regard ?
- (iii) In what way can he keep all his 12 Directorships with one DIN ?
- (c) Party A and Party B entered into a contract for construction of residential apartments. The contract contained an arbitration clause whereby all disputes between the parties would be submitted to an arbitral tribunal consisting of a sole arbitrator Mr. C. There was a dispute in settling the bills of the civil engineers involving a substantial amount and accordingly, the parties decided to refer the matter to arbitration. Mr. C was orally informed about his appointment as an arbitrator on 01-06-2019. Subsequently, a written appointment letter dated 15-06-2019 was sent to him which was received by him on 18-06-2019. In the light of the above facts, explain under the provisions of Arbitration and Conciliation Act, 1996 :
- (i) The date within which the arbitral award shall be made.
- (ii) For what period can the parties, by consent, extend the period for making the award ?

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- (d) SLX International Ltd., a foreign trade creditor, having its office in New York wants to file a petition under the Insolvency and Bankruptcy Code, 2016 on default of a debtor in India. It moved a petition under Section 9 of the Code seeking commencement of insolvency process. The foreign company was not having any office or bank account in India. Because of this, it could not submit a "certificate from financial institution" as required under the Code. Examine whether the petition is admissible under the Insolvency & Bankruptcy Code, 2016 ?
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