

07/11/19

NOV 2019

(1)

Final New Syllabus
Paper - 4
Corporate and Economic Laws SMG2

Roll No.

Total No. of Printed Pages – 11

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. 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/her answers in Hindi will not be evaluated.

SMG2

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PART – II

1. (A) You are the CFO and in-charge of legal compliances of a large multi-national company in India. The Board of Directors of the Company are broad based and comprise of competent directors who are Indian as well as Foreign Nationals. Mr. 'X', who is a Director (Business Development) on the Board is very often on business tour abroad. He approached you and wants to know from you the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors. Analyse the following situations and advise suitably, Mr. X referring to the provisions of the Companies Act, 2013. 8
- (a) To how many directors can a person be appointed as an alternate director and how many votes does he have in one Board Meeting ?
- (b) If the original director joins the Board Meeting through video conferencing without returning to India, then, can the alternate director appointed in his place attend the same board meeting ? If yes, whose presence and vote will be counted ?
- (c) In case of a private company, where an alternate director is appointed in place of a non-executive director whose term is indefinite, then, what will be the tenure of such alternate director, provided the original director does not return to India for a longer period say 3-4 years ?
- (d) Can an Executive Director/Whole Time Director/Managing Director appoint alternate directors ?

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(B) The Articles of Association of M/s. DEF Limited (Non-Government Company) restricts the Company to contribute to National Defence Fund in any financial year for a sum not exceeding ₹ 5 Lakhs. The Articles is silent about contribution to bonafide Charitable Fund and to a Political Party. The Company earned net profit during the last five financial years as under :

Financial Year	Net Profit (₹ in Lakhs)
2018-19	45
2017-18	25
2016-17	20
2015-16	15
2014-15	10

The Board of Directors proposes to contribute in July 2019 for the first time during the financial year 2019-20 :

- (i) ₹ 7 Lakhs to National Defence Fund
- (ii) ₹ 3 Lakhs to a bonafide Charitable Fund
- (iii) ₹ 5 Lakhs to a Political Party

The Company seeks your advice on the following matters in respect of each of the above proposals under the provisions of the Companies Act, 2013.

- (i) The appropriate approving authority;
- (ii) The quantum of contribution that can be made;
- (iii) The mode of payment of such contribution.

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2. (A) A group of shareholders of M/s. FMG Limited made a complaint to the concerned Registrar of Companies (RoC) that the business of the Company is being carried on for unlawful and fraudulent purposes and filed an application to enquire into the affairs of the Company. Referring to and analyzing the provisions of the Companies Act, 2013, decide : 4
- (i) Whether the RoC has the power to order for an inquiry into the affairs of the Company ?
 - (ii) If yes, state the procedure to be followed by the RoC.
 - (iii) Whether the inquiry should be pursued by the RoC in case the complaint is withdrawn by the same group of shareholders subsequent to the Order for enquiry ?
 - (iv) Whether the Central Government has the power to direct the RoC to carry out the inquiry ?

- (B) At the meeting of the members of M/s QRS Limited, a scheme of compromise and arrangement was approved by requisite majority. The National Company Law Tribunal (NCLT) after complying the provisions, issued an Order, approving the scheme of compromise and arrangement. 4

List out the matters to be provided in the Order issued by NCLT under Section 230(7) of the Companies Act, 2013.

When shall the Order be filed with ROC ?

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(C) M/s AWP Limited defaulted in repayment of a term loan taken from a Nationalized Bank against the security created as first charge on its Land & Buildings. The Bank classified the debt from M/s AWP Limited as Non-Performing Asset. The Bank issued Notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities in full within a period of 60 days from the date of Notice. The Company objected for full settlement and the time limit for settlement. The Bank did not respond to the objection of the Company. In the light of the provisions of the SARFAESI Act, 2002 decide :

- (i) Whether the objection of the Company is valid ?
- (ii) Whether the Bank has to respond to the objection of the Company ?
- (iii) Whether the Bank has right to enforce the security interest without the intervention of the Court ?

3. (A) In the light of the provisions of the Companies Act, 2013, examine whether the following Companies can be considered as a 'Foreign Company' :

- (i) M/s Red Stone Limited is a Company registered in Singapore. The Board of Directors meets and executes business decisions at their Board Meeting held in India.
- (ii) M/s Blue Star Public Company Limited registered in Thailand has authorized Mr. 'Y' in India to find customers and to enter contracts with them on behalf of the Company.
- (iii) M/s. Xex Limited Liability Company registered in Dubai has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India.

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(B) Mr. 'B' purchased a flat out of the proceeds earned by Drug Trafficking. The flat was attached by the Director, Director of Enforcement after complying the procedures under Section 5 of the Prevention of Money Laundering Act, 2002 (PMLA, 2002). Mr 'B' got a stay from the High Court for any proceedings under the said Act. The stay was subsequently vacated.

State the relevant provisions of the PMLA, 2002 for computing the period of provisional attachment including extension, if any.

Whether Mr. 'C', son of Mr. 'B' can occupy the flat during the period of provisional attachment ?

4. (A) 'X' Stock Exchange Limited was granted recognition by Securities and Exchange Board of India (SEBI). The stock brokers of the Stock Exchange did not pay much heed to the concept of governance and focused on increasing their wealth and snubbed the protection of investors. Their activities were against the interest of the trade and general public.

(i) Examine whether the Central Government / SEBI has the power to withdraw the recognition granted to 'X' Stock Exchange Limited under the provisions of Securities Contracts (Regulations) Act, 1956 ?

(ii) Whether a person can be a member of an unrecognized Stock Exchange for the purpose of performing any contracts in Securities ?

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(B) The composition of Audit Committee of M/s MKBTC Limited, an unlisted Public Company, as on 31-3-2019 comprised of 7 Directors including 4 Independent Directors. The majority of the members of the Audit Committee has the ability to read and understand the financial statements but none of them has accounting or related financial management expertise. The Company listed its Securities in a recognized Stock Exchange in the month of August 2019. Referring to the regulations of Securities and Exchange Board of India [Listing Obligations and Disclosure Requirements] Regulations 2015, decide whether the existing Audit Committee can continue after listing of its Securities ? 4

(C) In the light of the provisions of the Foreign Contribution (Regulation) Act, 2010 examine and decide whether the following persons in India are permitted to receive the amount/articles in the following situations : 6

- (i) M/s KG & Co; a partnership firm obtained loan from a club registered in London for its business purpose.
- (ii) Hello FM, a registered association, received funds from a foreign company for establishing Frequency Model Radio Station to broadcast audio news.
- (iii) Mr. Happy received a wrist watch as marriage anniversary gift from his uncle, a citizen of USA. The market value of the wrist watch is ₹ 25,000.

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5. (A) Due to an unprecedented flood, all the fixed assets of a Company were 4
damaged extensively beyond renovation or repair. The cost of
replacement of assets were huge and the sum insured on the fixed
assets did not cover all the assets. Therefore, the operations of the
Company were permanently discontinued. Meanwhile, based on a
winding-up petition filed by the secured creditors, the High Court
passed a winding-up order. The workers of the Company opposed to
the winding-up petition and also filed an appeal against the winding-up
order. The workers are not sure whether their appeal would be heard in
the winding-up proceedings. Examine, under the provisions of the
Companies Act, 2013, whether the appeal filed by the workers would
succeed and their dues / interest will be protected in priority ?
- (B) M/s KIL Limited, a listed company, proposed to acquire a plant for 4
consideration other than cash from Mr. KK, a director. The Managing
Director of the Company identified Mr. JK a registered valuer under
the provisions of the Companies Act, 2013 for the purpose of valuation
of the plant. Mr. KK acquired the plant 48 months back from a
partnership firm in which the spouse of Mr. JK is a partner. The
Managing Director of the Company issued an order appointing Mr. JK
as a registered valuer. Examine and decide whether the decision of
appointment and the mode of appointment is valid under the
provisions of the Companies Act, 2013 ?

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- (C) In view of the deep recession prevailing in the market for the past three years, M/s. Infra Limited (Corporate Debtor), which was facing the brunt of financial crisis, could not pay salaries and wages to its workmen and employees for the past 6 months. The workmen and the employees, who are the members of a recognized Trade Union "Infra Labor Federation", made a complaint in this regard. Thereafter, the Trade Union approached and urged the Management of the Company in person and through representations in writing to settle the arrears of wages and salaries due to its members. The Corporate Debtor neither disputed nor took any actions to settle the amount. Under the circumstances, Infra Labor Federation filed an application before the Adjudicating Authority i.e. with the National Company Law Tribunal for initiating a Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016. 6

In the light of the provisions of the Insolvency and Bankruptcy Code, 2016, examine the following :

- (i) Validity of the Application.
- (ii) What will be the "Initiation date" for initiating the Corporate Insolvency Resolution Process ?

6. (A) Mr. 'K' is a small shareholder director in M/s KGP Tyres Limited from 1st April 2018 and in M/s VSR Cotton Mills Limited from 1st April 2019, in compliance with the relevant provisions of the Companies Act, 2013. M/s KGP Tyres Limited has not paid interest on the public deposits due from 1st July 2018. In the light of the information given above, examine the following under the provisions of the Companies Act 2013. 4

- (i) Whether the office of Mr. 'K', small shareholder director, shall become vacant in M/s KGP Tyres Limited and M/s VSR Cotton Mills Limited ?
- (ii) If yes, state the period from which the office of the directorship shall become vacant.

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Mr 'R' holds directorship in 10 Public Companies and 11 Private Companies as on 31.05.2019. One of the above Private Company is a dormant Company. Apart from the dormant Company, on 30.06.2019 a Private Company (in which Mr. R is holding directorship) has become a subsidiary of a Public Company. 4

In the light of the provisions of the Companies Act, 2013 examine and decide :

- (i) The validity of holding directorship of Mr 'R' with reference to number of directorship as on 31.05.2019 and as on 30.06.2019.
- (ii) Whether a Company has power to specify any lesser number of Companies in which a director of the Company may act as a director ?

(B) Mr. Thangavel is a Director in 7 Companies with a DIN (Director Identification Number) allotted to him. Again, another DIN was inadvertently allotted to him which was never used for filing any document with any Authority. He desires to surrender the second DIN and keep all his directorship with the first DIN. Advise him the procedure to be followed under the provisions of the Companies Act, 2013 and the Rules made thereunder for surrendering the second DIN inadvertently obtained by him. 4

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(C) Mr. 'K' used his car for smuggling cash and the Special Court found on conclusion of trial that an offence of money laundering was committed by Mr. 'K' under the provisions of the Prevention of Money Laundering Act, 2002 (PMLA, 2002). The car was under hypothecation to a Nationalized Bank for the car loan obtained. Referring to provisions of the PMLA, 2002, examine whether the car can be confiscated despite the existence of encumbrance ? **3**

(D) The Committee of Creditors of M/s XYZ Limited proposes to appoint Mr. Ajit, an Insolvency Professional, as Insolvency Resolution Professional in the matter of corporate insolvency process of M/s XYZ Limited. Mr. Ajit was a promoter of M/s ABC Limited which is a holding company of M/s XYZ Limited. Examine and decide whether Mr. Ajit is eligible for appointment as an Insolvency Resolution Professional under the Provisions of Insolvency and Bankruptcy Code, 2016. **3**

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