

**Paper-13: CORPORATE LAWS AND COMPLIANCE**

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Full Marks: 100

Time Allowed: 3 Hours

Answer Question No. 1 which is compulsory carries 20 marks and answer any 5 Question from Q. No 2 to Q. No. 8

(1) Answer any 4 from the below

4x5=20

- (a) An audit firm, comprising of two partners, holds office as auditor of 40 private companies out of which paid-up capital of 20 companies exceeds ₹ 50 lakhs. Such audit firm wants to be appointed as an auditor in XYZ Pvt. Ltd. Decide whether this is in consonance with the applicable law.

**Answer:**

As per Section 141(3)(g) of the Companies Act, 2013 private companies shall also be included in the provisions with respect to ceiling on number of audits with the restriction that the private companies having paid up share capital less than 100 crore rupees shall not be included for calculation of specified number of audits. As per the provision, a person shall not be eligible for appointment as an auditor of a company if such person or partner is at the date of such appointment or reappointment holding appointment as an auditor of more than twenty companies. Therefore, such firm cannot be appointed as an auditor of XYZ Pvt. Ltd as it will exceed the ceiling prescribed for number of audits. There is no relevance of paid up share capital of 20 companies in the above case.

- (b) Mr. Negi is a director of Fulcrum Ltd. He has approached Housing Finance Co. Ltd. for the purpose of obtaining a loan of ₹50 lacs to be used for construction of building his residential house. The loan was sanctioned subject to the condition that Fulcrum Ltd. Should provide the guarantee for repayment of loan instalments by Mr. Negi. Advise Mr. Negi.

**Answer:**

According to Section 185 of the Companies Act, 2013, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person. Thus, Mr. negi is not allowed for loan of ₹ 50 lacs against guarantee by the company Fulcrum Ltd.

- (c) Shreya, a famous playback singer of India wants to perform a musical night in Paris for Indians residing there. Foreign exchange to the extent of USD 20,000 is required for this purpose. State the kind of approval required for the said transactions under the Foreign Exchange Management Act, 1999.

**Answer:**

Foreign exchange drawals for cultural tours require prior permission/approval of the Government of India irrespective of amount of foreign exchange required. Therefore, in the given case Shreya, the singer is required to seek permission of the Government of India.

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- (d) A Director claims that he may leave the company any time merely by submitting his resignation without waiting for its acceptance. Discuss whether it is acceptable and valid?**

**Answer:**

A resignation once communicated to the company need not be accepted by the Board of Directors. There is misconception that any resignation has to be accepted. The resignation is effective of the date if any date is specified in his letter of resignation. If no date is specified, it becomes effective only from the time when the letter of resignation is received by the company. But a whole-time director being an employee, Resignation cannot be effective unless the resignation is accepted.

- (e) Mr. Anuj is a director in State Bank of India. On the ground of his misconduct to the interest of the depositors, the Reserve Bank of India terminates his service. Decide whether the Reserve Bank of India can do so under the Banking Regulation Act, 1949.**

**Answer:**

Under section 36AA of the Banking Regulation Act, 1949, RBI can terminate any Chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when RBI is of the opinion that conduct of such persons is detrimental to the interest of the depositors or for securing proper management of the banking company. Before such termination concerned person should be given opportunity to be heard of. Such terminate officials can make appeal to the Central Govt within 30 days from the date of communication of such termination order. The decision of the Central Govt. cannot be called into question. In case an order is issued pursuant to this section the concerned person shall cease to hold his office for a period of not exceeding 5 years as may be specified in the order. Contravention of the above provision shall be punishable with a fine, which may extend to ₹ 250 per day.

- (2) (a) Explain Asset Reconstruction, Financial Assets under the Securitization and Reconstruction of Financial Assets and Enforcement of Security and Interest Act, 2002.** 5
- (b) Flexible Co. with a paid -up capital of ₹ 50 lakhs entered into a contract with Rigid Co. in which a director of Flexible Co. is holding equity shares of the nominal value of ₹ 50,000. The director did not disclose his interest at the Board meeting under section 184 of the Companies Act, 2013. Is the director liable for his act?** 5
- (c) What is the procedure to be followed, when a board meeting is adjourned for want of quorum?** 6

**Answer:**

- (2) (a) Asset Reconstruction means acquisition by any securitization company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realization of such financial assistance. (Section 2 (b) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.) and where Financial Assets means debt or receivables and includes:
- (i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or
  - (ii) any debt or receivables secured by mortgage of, or charge on, immovable property; or a mortgage, charge, hypothecation or pledge of movable property; or
  - (iii) any right or interest in the security, whether full or part underlying such debt or receivables; or

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- (iv) any beneficial interest in property, whether movable or immovable or in such debt, receivables, whether such interest is existing, future accruing, conditional or contingent; or
- (v) any financial assistance. [Section 2(1)].
- (b)** As per section 184(2) of the Companies Act, 2013 the disclosure of the interest by directors do not apply to any contract or arrangement within two companies where any of the directors of one company or two or more of them together holds or hold not more than 2% of the paid up share capital in the other company. In the present case, the holding of the director of Flexible Co. in Rigid Co. is less than 2%  $[(50,000/50,00,000) \times 100\% = 1\%]$ , hence, the director is not liable.
- (c)** Section 174(4) of the Companies Act, 2013 provides that, if a Board meeting could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned to the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a national holiday, at the same time and place. It may be noted that on adjournment of a meeting, the meeting having started and not ended will not constitute a contravention of Section 173(1) under which a company is required to hold four board meetings in a year and not more than 120 days shall elapse between two board meetings. In case of adjournment of the meeting, it shall be deemed to have been held on the date on which it was started and not on the date when the adjourned meeting was held.
- (3) (a) A company wants to include the following clause in its Articles of Association:**
- 'Each director shall be entitled to be paid out of the funds of the company for attending meetings of the Board or a Committee thereof including adjourned meeting such sum as sitting fees as shall be determined from time to time by the Directors but not exceeding a sum of ₹ 30,000 for each such meeting to be attended by the Director. You are required to advise the company as to the validity of such a clause and the correct legal position under the provisions of the Companies Act, 2013.** 5
- (b) What are the duties of the inspector as enumerated in Section 223 of the companies Act, 2013, in relation to his report.** 6
- (c) Magma Company Ltd. in its Annual General Meeting appointed all its Directors by passing one single resolution. No objection was made to the resolution. Examine the validity of appointment of Directors explaining the relevant provisions of the Companies Act, 2013. Will it make any difference, if Magma Company was a private company** 5

**Answer:**

- (3) (a)** The Companies Act, 2013 vide section 197 (5) provides that the sitting fee payable to directors for attending meetings of the Board or committees thereof will be decided by the Board subject to limits prescribed by the Central Government in rules framed in this behalf. The limit prescribed by the Central Government is ₹1 Lakh per meeting and may be different for independent and non independent directors. Hence the clause mentioned in articles, is well within the prescribed limits, and it is valid and effectual.
- (b)** Section 223 of the Companies Act, 2013 deals with Inspector's report. The following provisions are applicable in respect of the Inspector's report on investigation:
- (A) Submission of interim report and final report [Sub section (1)]:** An inspector appointed under this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) may, and if so

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directed by the "Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.

- (B) **Report to be written or printed [sub section (2)]:** Every report made under sub-section (1) above, shall be in writing or printed as the central Government may direct.
- (C) **Obtaining copy of report [Sub section (3)]:** A copy of the above report may be obtained by making an application in this regard to the Central Government.
- (D) **Authentication of report [Sub section (4)]:** The report of any inspector appointed under this Chapter shall be authenticated either—
- (a) by the seal of the company whose affairs have been investigated; or
  - (b) by a certificate of a public officer having the custody of the report as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
- (E) **Exceptions:** Nothing in this section shall apply to the report referred to in section 212 of the Companies Act, 2013.

An order under section 394 of the Companies Act, 1956 transferring the property, rights and liabilities of one company to another does not automatically transfer contracts of personal service, which are in their nature, incapable of being transferred and no contract of service is thereby created between an employee of the transferor company on the one hand and the transferee company on the other. In *Nokes vs. Doucaster Amalgamated Collieries Ltd. [(1940) 3All 2k 549]*, the House of Lords categorically stated that the workers are not furniture and their services cannot be transferred without their consent. Therefore, the workers of ABC Co. Ltd will succeed against XYZ Co. Ltd.

- (c) At a general meeting, two or more persons cannot be appointed as directors by a single resolution unless a resolution that appointment shall be so made has first been agreed to by the meeting without any vote being cast against it. A resolution moved in contravention of this provision shall be void, whether or not objection was raised at the time when such resolution was passed (Section 162). In the present case, all the members passed a single resolution appointing all the directors. The resolution is void since before moving the resolution for appointment of all the directors by a single resolution, no resolution was passed to the effect that all the directors shall be appointed by a single resolution. It is immaterial that no member objected to the appointment of all the directors by a single resolution. Section 162 applies to all companies, whether public or private. Therefore, the answer would remain same even if the company in the present case is a private company.

**(4) (a) The promoters of Welcome Company incorporated on 8th June, 2015 have entered into a contract with A on 10th May, 2015 for supply of goods. After incorporation, the company does not want to proceed with the contract. As a company advisor, advise the management of the company, referring to the provisions of the Companies Act, 2013. 5**

**(b) Mr. Abir, a Cost Accountant and an Independent Director of Gurgaon Auto Ancillaries Ltd. will be abroad for three months from 10-11-2014. The Company wants to appoint Mr. Rahul as an alternate Director in place of Mr. Abir. Draft a Board Resolution authorising the appointment. 5**

**(c) The Articles of Association of Disney Toys Private Limited provide that the maximum number of Directors in the company shall be 10. Presently, the company is having 8 directors. The Board of Directors of the said company desire to increase the number of**

directors to 16. Advise whether under the provisions of the Companies Act, 2013 the Board of Directors can do so.

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**Answer:**

**(4) (a) (i)** It is not only the company which is allowed, under the Specific Relief Act, to adopt and enforce its pre-incorporation claims against third parties, Section 19 of the Specific Relief Act also allows, the other party to enforce the contract against the company if (i) the company had adopted the same after incorporation, and (ii) the contract is warranted by the terms of incorporation. Contracts like preparation and printing of the memorandum, and articles, remunerating the professionals, if any, for securing the registration of the company, renting premises, hiring secretarial staff are envisaged under the Act.

Pre-incorporation contracts in general are void ab-initio, and hence not binding on the company. However, under Section 19(e) of the Specific Relief Act, 1963, the party to the contract can enforce the contract against the company, if

- (a) The company had adopted the same after incorporation, and
- (b) The contract is warranted by the terms of incorporation.

Thus, unless the company adopts the contract, the other Party cannot enforce the same against the Company. There shall be no personal liability for the Promoter, if the agreement provides that-

- (i) His liability shall cease once the Company adopts the agreement, and
- (ii) Either party may rescind the agreement, if the Company does not adopt it within a specified time.

**(b)**

ZICA AUTO ANCILLARIES LTD.

Meeting of the Board of Directors.

Resolution on Agenda Item 102.3

Date: 06.11.2014

RESOLVED THAT in pursuance of Sec.161 (2) of the Companies Act,2013 read with Article No..... of the Articles of Association of the Company, MR. Rahul who is not a Director/Alternate Director of the company, be and is hereby appointed as an Alternate Director of the Company in place of MR. Abir, an Independent Director for a period of, three months commencing from 10.11.2014 or such further period till the return of Mr. Abir from abroad but not longer than that permissible to Mr. Abir for his tenure as a Director in the company.

FURTHER RESOLVED THAT the Board endorses the recommendation of the Appointment and Remuneration Committee of the Board approving on verification the eligibility of Mr. Rahul to be appointed as an Independent Director and who is otherwise not disqualified for appointment.

RESOLVED FURTHER THAT the Company Secretary be and is hereby authorized to file returns and issue notice for appointment of Mr. Rahul in various committee of the Board.

**(c)** Under section 149(1) of the Companies Act, 2013 every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and a maximum of fifteen directors. The proviso to section 149(1) states that a company may appoint more than fifteen directors after passing a special resolution.

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From the provisions of section 149 (1) as above, though the minimum number of directors may vary depending on whether the company is a public company, private or a one person company, the maximum number of directors is the same for all types at 15 directors. In the given case since the number of directors is proposed to be increased to 16, the company will be required to comply with the following provisions:

- (i) Alter its Articles of Association under section 14 of the Act;
- (ii) Authorise the maximum number of directors to 16 by means of a special resolution of members passed at a duly convened general meeting of the company.

**(5) (a) Suzlon Ltd. declared and paid dividend in time to all its equity holders for the financial year 2014-15, except in the following two cases:**

- (i) Mrs. Reeta, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Reeta about this discrepancy.**
  - (ii) Dividend amount of ₹ 50,000 was not paid to Mr. Shyam, deceased, in view of court order restraining the payment due to family dispute about succession.**
- You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends. 8**

**(b) State the main features of the qualified and Independent Audit Committee set up under clause 49 of the listing agreement. 8**

**Answer:**

**(5) (a) (i)** Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her. In the given situation, the company has failed to communicate to the shareholder Mrs. Reeta about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

(ii) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law. In the present circumstance, the dividend could not be paid to Mr. Shyam because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

**(b)** The main features of a qualified and independent audit committee to be set up under clause 49 of listing agreement are as follows:

1. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors;
2. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise;

**Explanation (i):** The term "financially literate" means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

**Explanation (ii):** A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being

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or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

3. The Chairman of the Audit Committee shall be an independent director;
4. The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
5. The Audit Committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;
6. The Company Secretary shall act as the secretary to the committee.

**(6) (a) An arrangement has been made among the cotton producers that the cotton produced by them will not be sold to mills below a certain price. The arrangement is in writing but it is not intended to be enforced by legal proceeding. Examine whether the said arrangement can be considered as an agreement within the meaning of Section 2(b) of the Competition Act, 2002.** **5**

**(b) What do you mean by "Spot Delivery Contract"?** **5**

**(c) What do you mean by "Power System" according to The Indian Electricity Act, 1910?** **6**

**Answer:**

**(6) (a)** As per section 2(b) of the Competition Act, 2002, an agreement includes any arrangement or understanding or action in concert:

- (i) Whether or not, such arrangement, understanding or action is in writing; or
- (ii) Whether or not, such arrangement, or understanding or action is intended to be enforceable by legal proceedings.

In the given case the understanding reached among the cotton producers not to sell below a certain price shall amount to an agreement as defined under section 2(b) notwithstanding the fact that through the arrangement is in writing but not intended to be enforced by legal proceeding.

**(b)** "Spot Delivery Contract" as per The Securities Contracts (Regulation) Act, means a contract which provides for-

- (i) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties for the contract do not reside in the same town or locality;
- (ii) Transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.

**(c)** "Power System" under The Indian Electricity Act, 1910 means all aspects of generation, transmission, distribution and supply of electricity and includes one or more of the following, namely:

- (i) generating stations
- (ii) transmission or main transmission lines



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- (iii) sub-stations
- (iv) load despatch activities
- (iv) electric supply lines
- (v) mains or distribution mains
- (vii) overhead lines
- (viii) service lines
- (ix) works

**(7) (a) In what way does the Reserve Bank of India regulate the determination of the loans and advances which can be made by a banking company under the Banking Regulation Act, 1949?** **6**

**(b) Mr. Abul is an exporter of goods and services. Explain his duties under Foreign Exchange Management Act, 1999 regarding realization and repatriation of Foreign Exchange on such exports.** **5**

**(c) What are Non performing Asset under the SARFAESI ACT, 2002?** **5**

**Answer:**

**(7) (a)** Power of RBI to regulate determination of loans and advances by banking companies:

By virtue of provisions of Banking Regulations Act, 1949 as contained in Section 21 the RBI is empowered to issue directives to a banking company to determine the policy in relation to loans and advances. Such direction may relate to:

- (1) Purpose for which loan may or may not be made.
- (2) Margin stipulation.
- (3) Maximum amount of advances to any company, firm individual or association of persons (at present 15% for individual borrower without infrastructure project, if infrastructure project go by additional 10%, 40% for group borrower and for infrastructure project of group borrower it may be up to 50% of bank's capital and reserve (presently tier-I & tier-II capital from capital adequacy point of view.)
- (4) Maximum amount of guarantee liability on behalf of any individual firm / company.
- (5) The rate of interest and other terms and conditions on which such advances are made or guarantee given. It may further be mentioned that in accordance with the provisions of Section 21A, rate of interest charged by banking company on the basis of loan contract between the bank and debtor is not to be subject to scrutiny by the court.

**(b)** As per the provisions of FEMA Act, 1999, every exporter of goods shall;

- Furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India;
- Furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realization of the export proceeds by such exporter.
- Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

**(c)** Non performing asset', means an asset or account of a borrower, which has been classified by a bank or financial institution, as sub-standard, doubtful or loss asset.

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- In case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force in accordance with the directions or guidelines relating to asset classification issued by such authority or body
- In any other case, in accordance with the directions or guidelines relating to asset classification issued by RBI

**(8) (a) What are the implementation guidance of the Corporate Social Responsibility (CSR) policy as per the CSR voluntary Guidelines 2009? 8**

**(b) What are the advantages of a formal governance structure? 8**

**Answer:**

- (8) (a) 1.** The CSR policy of the business entity should provide for an implementation strategy which should include identification of projects/ activities, setting measurable physical targets with timeframe, organizational mechanism and responsibilities, time schedules and monitoring. Companies may partner with local authorities, business associations and civil society/n on government organizations. They may influence the supply chain for CSR initiative and motivate employees for voluntary effort for social development. They may evolve a system of need assessment and impact assessment while undertaking CSR activities in a particular area. Independent evaluation may also be undertaken for selected projects/activities from time to time.
2. Companies should allocate specific amount in their budgets for CSR activities. This amount may be related to profits after tax, cost of planned CSR activities or any other suitable parameter.
3. To share experiences and network with other organizations the company should engage with well established and recognized programmes/platforms which encourage responsible business practices and CSR activities. This would help companies to improve on their CSR strategies and effectively project the image of being socially responsible.
4. The companies should disseminate information on CSR policy, activities and progress in a structured manner to all their stakeholders and the public at large through their website, annual reports, and other communication media.
- (b)** The advantages of a formal governance structure are several. First of all, there is defined structure with defined channels for decision making and clear lines of responsibility. Secondly, the board can tackle are as that may be sensitive from a family viewpoint but which nonetheless need to be dealt with succession planning is a case in point (deciding who would be best to fill key roles in the business should the existing incumbents move on, retire, or die). Succession planning is important too in the context of raising external equity because, once a family business starts to seek external equity investment, then shareholders will usually want to know that succession planning is in place. The third advantage of a formal governance structure is also one in which external shareholders would take a keen interest: the appointment of non executive directors. It may be that the family firm, depending on its size, appoints just one, or maybe two, non executive directors. The key point about the non executive director appointments is that the persons appointed should be independent; it is this trait that will make their contribution to the family firm a significant one. Of course, the independent non-executive directors should be appointed on the basis of the knowledge and experience that they can bring to the family firm.