

PAPER 13 – Corporate Laws and Compliance

Time Allowed: 3 Hours

Full Marks: 100

The figures in the margin on the right side indicate full marks.

SECTION A

[Answer to Q.No.1 is compulsory and attempt any 4 from the rest]

Question 1:

Mr. Anand is an auditor and he has ventured newly into this area. He is having the following issues in his mind. You are requested to guide him in resolving his issues, stating relevant sections and laws.

- a) He wishes to undertake audit work as well as work as employee with Firm ABC, an auditing firm.
- b) He wishes to join Firm ABC as a partner, what would be his ceiling limit.
- c) He wants to compute and understand which of the following companies shall be/ not be taken into consideration for calculating specified number of audits.
 - i) Audit of a Private Company
 - ii) Guarantee Companies not having Share Capital
 - iii) Audit of a Non-Profit Company
 - iv) Special Audits
 - v) Audit of foreign companies
 - vi) Branch Audits
 - vii) Company Audit where he is appointed as a Joint Auditor.
- d) He wants to know, that as a member of ICAI, is there any other restrictions on him as a matter of self regulation in matter of inclusion/exclusion of audit of Private Companies for calculating the specified number of assignments.
- e) Would the rules be different from case (d) above had he joined a CA Firm.
- f) He also wishes to accept an offer to become the first auditor of Xee Ltd. What are the procedures that the Board of Directors and Mr. Anand need to undertake.

[1+2+3+1+4+4]

Question 2:

- (a) Wee Ltd. has suffered a Net Loss for the year. The Directors however declared and paid an Interim Dividend at 30% based on the half-yearly performance. Comment.
- (b) Board of Directors of M/s. ABee Ltd, in its meeting held on 29th May 2013, declared an interim dividend payable on paid up Equity Share Capital of the Company. In the Board Meeting Scheduled for 10th June 2013, the Board wants to revoke the said declaration. You are required to state with reference to the provisions of the Companies Act, 1956 whether the Board of Directors can do so.
- (c) ROC has received a complaint from a group of Creditors of a Company. The complaint alleges that the Directors of the Company, in order to prevent the unearthing of their embezzlement of Company's funds, are engaged in falsification and destruction of original accounting books and records. The Complainants urged the ROC to seize the accounting books and records of the Company so that the Directors may not be able to tamper the same. You are required to state the powers, if any, of the ROC and inspector in this respect.
- (d) Can Central Government investigate into the affairs of a company?

[4+4+6+1]

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Question 3:

- a) M/s Bee Ltd. a company registered in the State of West Bengal desires to shift its registered office. State the laws and the provisions to be followed if the change occurs under the following conditions:
- Change from one place to another within the same city.
 - Change from one city to another within the same state.
 - Change of jurisdiction of ROC.
 - Change of state.
- b) The Articles of Association of a Limited Company provided that 'X' shall be the Law Officer of the company and he shall not be removed except on the ground of proved misconduct. The company removed him even though he was not guilty of misconduct. Decide, whether company's action is valid.
- c) Article of a Public company clearly stated that Mr. L will be the life time solicitor of the company. Company in its General Meeting of shareholders resolved unanimously to appoint Mr. M in place of Mr. L as the solicitor of company by altering its AOA. State with reasons, whether the company can do so? If L files a case against the company for removal as solicitor, will he succeed?
- d) The Secretary of a Company issued a share certificate to 'A' under the Company's seal with his own signature and the signature of a Director forged by him. 'A' Borrowed money from 'B' on the strength of this certificate. 'B' wanted to realize the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name. [9+1+3+2]

Question 4:

- a) Rajesh, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai on 13.05.2013. He did not receive the shares certificates till 14.09.2013. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 1956, whether the Court at New Delhi is competent to take action in the said matter.
- b) 'A' commits forgery and thereby obtains a certificate of transfer of shares from a company and transfers the shares to 'B' for value acting in good faith. Company refuses to transfer the shares to 'B'. Whether the company can refuse? Decide the liability of 'A' and of the company towards 'B'. In the light of the above state the meaning and consequences of a forged transfer.
- c) ABC Company refuses to register transfer of shares made by Mr. A to Mr. B. The company does not even send a notice of refusal within the prescribed time. Has the aggrieved party any rights against the company for such refusal. Advice.
- d) The Board of Directors of a company decided to pay 5% of issue price as underwriting commission to the underwriters. On the other hand the Articles of Association of the company permit only 3% commission. The Board of Directors further decides to pay the commission out of the proceeds of share capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 1956?
- e) When can a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company? Can these shares be offered to Preference Shareholders? [3+4+4+2+2]

Question 5:

- a) K Ltd was in process of incorporation. Promoters of the company signed an agreement for purchase of certain furniture for company and payment was to be made to the supplier of the furniture after incorporation of the company. The company was incorporated and the furniture was received and used by it. Shortly after incorporation, company went into

liquidation and debt could not be paid. As a result supplier sued the promoters. Examine whether the promoters can be held liable under following situations:-

- i) Where company has adopted the contract after incorporation
 - ii) Where company entered into a fresh contract after incorporation
- b) A company was incorporated on 6th October, 2013. The certificate of incorporation of the company was issued by the Registrar on 15th October, 2013. The company on 10th October, 2013 entered into a contract which created its contractual liability. The company denies from the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide, under the provisions of the Companies Act, 1956, whether the company can be exempted from the said contractual liability.
- c) The Memorandum of Association of a company was presented to the Registrar of Companies for registration and the Registrar issued the certificate of incorporation. After complying with all the legal formalities the company started a business according to the object clause, which was clearly an illegal business. The company contends that the nature of the business cannot be gone into as the certificate of incorporation is conclusive. Answer the question whether company's contention is correct or not.
- d) The Central Government, without referring the matter to the Supreme Court of India for inquiry, removed a member of the Competition Commission of India, on the ground that he has become physically or mentally incapable of acting as a member. Decide under the provisions of Competition Act, 2002 whether the removal of the member is valid.

[7+3+3+2]

Question 6:

- a) Useful Ltd. had taken a loan of ₹ 2 crore from ABC Bank secured by some assets. The company has defaulted in the matter of payment of some installments of loan as per terms of the loan agreement. The bank has filed a petition in the High Court on the ground that the company is unable to pay its debts.
The company opposes the petition for winding up on the ground that it has employed 1000 workers, paid their salaries regularly and that it has paid all the tax dues to the Government. The company has further contended that if the company is compelled to repay the loan immediately, it will cripple the company causing hardships to employees and other persons having business dealings with the company. The company is also supported by some major creditors.
Explain the circumstances under which the company may be ordered to be wound up by the Court on the ground of inability to pay its debts and whether the bank will succeed in this case.
- b) Young Bank is a newly formed bank. The constitution of its Board of Directors is mostly graduates and under-graduates. Is the constitution as per The Banking Regulations Act, 1949? Discuss. Also the Bank wants to reconstitute its board and retire some of its directors. What are the provisions as per law.
- c) Mr. A was a member of the Competition Commission of India. On the basis of information that he had acquired such financial interest as was likely to affect prejudicially his functions as a member of the Commission, the Central Government appointed an officer to hold an inquiry. On the basis of report of the said officer the Central Government issued an order of removal of Mr. A. Decide whether the action of the Central Government is in order under the provisions of the Competition Act, 2002?
- d) Ajay Ltd. is being wound up by the court. All the assets of the company have been charged to the company's bankers to whom the company y owes 1 crore. The company owes the following amounts to others:
- i) Dues to workers – ₹25 lakhs
 - ii) Taxes payable to Government – ₹5 lakh
 - iii) Unsecured creditors - ₹10 lakhs

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You are required to compute with reference to the provisions of the Companies Act, 1956 the amount each kind of creditors is likely to get if the amount realized by the official liquidators from the secured assets and available for distribution among the creditors is only ₹ 80 lakhs.

[3+6+3+3]

SECTION B

[Answer any five questions from Q.No.7 (a) to (f)]

Question 7:

- a) Discuss the difficulties faced in Governance by state owned businesses.
- b) Analyze CSR as a Corporate Brand
- c) State the reason for failure of construction industry to embrace Whole Life Cycle Costing
- d) Describe the core elements to be covered under CSR Policy
- e) Write a short note on Memorandum of Understanding and Public Sector Enterprises.
- f) Discuss the relevance of OECD Guidelines for Corporate Governance of State-owned enterprises.

[5×5]