

FINAL EXAMINATION

GROUP III

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2015

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.

Answer all the questions.

Students are requested to read the instructions against each individual question also.

All workings must form part of your answer.

Assumptions if any, must be clearly indicated.

SECTION A

1. Answer all question:

- (a) The Board of Directors of Complex Ltd. decide to pay 5% of issue price of shares 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 the Share Capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 2013. 3
- (b) Mr. Anshul, a Director of Wisdom Limited proceeding on a long foreign tour, appointed Mr. Rajul as an alternate director to act for him during his absence. The articles of the company provide for appointment of alternate directors. Mr. Anshul claims that he has a right to appoint alternate director. Examine. 3
- (c) Mr. Akhil, a member of a Producer Company, wants to transfer his shares. You are required to state as to how he can transfer his shares under the provisions of the Companies Act, 1956? 3
- (d) TUTLO LTD, a vehicles manufacturing company in India has received an order from a Transport company in Canada (USA) for supply of 100 trucks on lease. You are required to state how the said Tutlo Ltd. can accept such an order. 3

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- (e) Explain briefly the concept of 'Securitisation' under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. 3
- (f) What are the myths relating to Corporate Social Responsibility? 3
- (g) 'Business ethics helps to promote public reputation.' — Comment. 2

Answer:

1. (a) As per rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, a company may pay up to 5% of the issue price as underwriting commission but subject to the maximum prescribed under the company's articles of association. The commission may, however, be paid out of proceeds of the issue or the profit of the company or both. Thus, the company cannot pay more than 3% but can well pay out of the proceeds of the share capital.
- (b) Section 161 of the Companies Act, 2013 provides that the Board of Directors of a company may, if authorized by its articles or by resolution passed by the company in general meeting, appoint an alternate director to act for a director during his absence for a period of not less than 3 months from India. The alternate director can be appointed only by the Board of Directors and only in cases where the Board is authorized by Articles or by the company in general meeting. Hence Mr. Anshul, the director in question, is not competent to appoint alternate director and the appointment of Mr. Rajul as alternate director is not valid.
- (c) According to the provisions of Section 581ZD(1) and (2) of the Companies Act, 1956, the shares of a member of a Producer Company shall not be transferable but a member of a Producer Company may after obtaining the previous approval of the Board, transfer the whole or part of his shares along with any special rights, to an active member at par value.
- Based on the above provisions relating to the transfer of shares of a member in a Producer Company, Mr. Akhil has to obtain prior approval of the Board and then transfer his shares to an active member of the Producer Company at par value.
- (d) Taking any goods out of India to a place outside India amounts to 'export' [Sec 2(l)]. As per regulation 14 (a) of Foreign Exchange Management (Export of Goods and Services) Regulation 2000, export of goods on lease or hire or under any arrangement or in any other manner other than sale or disposal of such goods requires approval of the Reserve Bank of India.
- In the given case TUTLO LTD, proposes to supply on lease 100 trucks to Canada U.S.A. Lease of trucks to Canada involves taking goods to Canada (i, e. outside India), and so

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lease of trucks to Canada is 'export' within the meaning of Sec 2 (l). Since lease of truck does not amount to, sale or disposal of goods, exporting by way of lease requires the permission of Reserve Bank of India.

- (e) As per Sec. 2 (1) (z), of the SARFAESI Act, 2002, Securitization means acquisition of financial assets by any Securitization Company or reconstruction company from any originator, whether by raising of funds by such securitization company or reconstruction company from qualified institutional buyers by issue of security receipt representing undivided interest in such financial assets or otherwise.
- (f) **Corporate Social Responsibility (CSR)** is costly. Most of the corporate, more so the small and medium-sized business, feel that CSR is something which can be done by only companies which have achieved considerable size such as Tata, Birla or of the types of Infosys and Wipro.
- ❖ CSR is for CEOs. Most people still equate CSR with philanthropy, something which only the chairman/CEO should indulge in. There is a reason for this myth. Traditionally, the people who were seen in the functions organized by charities and supported by the corporates were the Chairman/CEOs. This coupled with the fact that CSR was just donations or philanthropy and the decision to support a particular charity was taken by the CEO or his wife made the myth stronger.
 - ❖ CSR is public relations (PR). Since a large number of CSR programmers are associated with sponsorship, topical supports resulting in some kind of functions where the corporate get visibility, many times they are seen as a PR exercise.
- (g) It is in the long term interest of a business organization to observe business ethics. Observing business ethics serves as a strategic branding tool in differentiating from competitor. It helps an entity to build trust with all its stakeholders. It also results in positive press, coverage thus enhancing its reputation with the public, Customers and within the business community. Thus, the statement "business ethics helps to promote public reputation' is correct.

SECTION B

2. Answer any four questions:

15×4=60

- (a) (i) **The Annual General Meeting of AMBA LTD. declared a dividend at the rate of 30% payable on paid up equity share capital of the company as recommended by the Board of Directors on 30th August, 2014. But the company was unable to post the dividend warrant to Mr. Jishu, an equity shareholder of the company, up to 30th October, 2014. Mr. Jishu filed a suit against the company for the payment of dividend along with interest at the rate of 20% per annum for default period.**

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Decide in the light of provisions of the Companies Act, 2013, whether Mr Jishu would succeed? Also, state the Directors' liability in this regard under the Act. 4

(ii) The Board of Directors of ADRIJA LTD. propose to donate `4,50,000 to a school established exclusively for the benefit of the employees and also donate `70,000 to a political party during the financial year ending March 31, 2015. The average net profit determined in accordance with the provisions of the Section 198 of the Companies Act, 2013 during the immediately preceding three financial years is `60,00,000.

Examine with reference to the provisions of the Companies Act, 2013 whether the proposed donations are within the powers of the Board of Directors of the company, ADRIJA LTD. 5

(iii) The Securities and Exchange Board of India issued an order against ABC Limited for redressal of grievance of one of its members. On failure on the part of the company the Board imposed penalty upon the company under Section 15C of the Securities and Exchange Board of India Act, 1992. The company seeks your advice whether it has any remedy against the order of the said Board. 4

(iv) 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.' 2

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.

Answer:

2. (a)

(i) **Provisions relating to time limit for payment of dividend.**

According to Sec. 127 of the Companies Act, 2013, dividend has to be paid within 30 days from the date of its declaration. The posting of dividend warrant by the company within 30 days will be deemed to be payment irrespective of the fact whether the shareholder has encashed it or not. Failure to pay or post dividend warrant within 30 days constitutes an offence under the Act and renders every director of the Company, if he is knowingly a party to the default, punishable with simple imprisonment for a term which may extend to two years and also to a fine of one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen percent per annum during the period for which such default continues.

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Present Case: Mr. JISHU'S Right:

The company was unable to post dividend warrant within 30 days of declaration. Thus as per Sec.127 of the Companies Act, 2013, Mr. Jishu can file a suit against the company for payment of dividend. But he would be entitled to dividend along with interest rate of 18% and not 20% for the default period.

Director's Liability:

Every director of the company, if he is knowingly a party to the default, punishable with simple imprisonment for a term which may extend to two years and also to a fine of one thousand rupees for every day during which such default continues.

(ii) Charitable Contribution

A contribution by a company is said to be charitable contribution if it is made without any object of availing any benefit for the company or for its employees and the object of contribution does not have any direct relation with the business of the company. In the given case contribution is to be made for the school which is exclusively for the benefit of the employees' children. Therefore, it cannot be considered as charitable within the meaning of section 181. It is purely a business decision and the Board of Directors of the company is empowered to take such a decision.

Political Contribution

Limit of political contribution

As per section 182, an eligible company can make political contribution upto 7.5% of average net profit of immediately preceding three financial years, in a financial year.

In the given case, average net profit of the company during preceding three financial years is ` 60,00,000/-. The Board is empowered to make political contribution to the tune of ` 4,50,000 being 7.5% of the average net profit of preceding three years. Since the political contribution proposed is only ` 70,000, it is well within the powers of the Board to make this contribution.

Procedure

Every political contribution is required to be approved only in a Board meeting by way of a resolution and full disclosure of the name of political party and amount contributed shall be made in the profit and loss account.

(iii) Remedy against order of SEBI:

ABC Limited was penalized by the SEBI. The following remedies are available to the company:

(1) **Appeal to the Securities Appellate Tribunal:** Section 15T of the SEBI Act 1992 provides

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that any person aggrieved by an order of the Board may prefer an appeal to the Securities Appellate Tribunal. Such appeal shall be filed within 45 days from the date on which a copy of the order of the Board was received. However, the Tribunal may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within the said period of limitation.

(2) **Appeal to the Supreme Court:** Section 152 of the SEBI Act, 1992 provides that any person aggrieved by the decision or order of the SAT (Securities Appellate Tribunal) may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order on any question of law arising out of such order. The Supreme Court may entertain such appeal even after the expiry of said period of limitation for a future period not exceeding sixty days, if there was reasonable cause for such delay.

(iv) 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) (i) What are the duties of the inspector as enumerated in Section 223 of the companies Act, 2013, in relation to his report. 5

(ii) ABC Company Limited was amalgamated with and merged in XYZ Company Limited. Some workers of ABC Company Limited refuse to join as workers of XYZ Company Limited and claim compensation for premature termination of service. XYZ Company Limited resists the claim on the ground that their services are transferred to XYZ Company Limited by the order of amalgamation and merger and, therefore, the workers must join service of XYZ Company Limited and cannot claim any compensation. According to the provisions of the Companies Act, 1956, examine whether the workers' contention is correct. 2

(iii) A person aggrieved by an order made by the Special Director (Appeals) desires to file an appeal against the said order to the Appellate Tribunal but the period of limitation of 45 days as prescribed in Section 19(2) of the Foreign Exchange Management Act, 1999 has expired. Advise. 2

(iv) The Board of Directors of Stepping Stones Publications Ltd. at a meeting held on 15.01.2014 resolved to borrow a sum of ` 15 crores from a nationalized bank. Subsequently the said amount was received by the company. One of the Directors,

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who opposed the said borrowing as not in the interest of the company has raised an issue that the said borrowing is outside the powers of the Board of Directors. The Company seeks your advice and the following data is given for your information:

- (i) Share capital ` 5 crores
- (ii) Reserves and Surplus ` 5 crores
- (iii) Secured Loans ` 15 crores
- (iv) Unsecured Loans ` 5 crores

Advice the management of the company.

3

(v) Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to the following persons:

- (i) An interested Direct,
- (ii) A Director who has expressed his inability to attend a particular Board Meeting,
- (iii) A director who has gone abroad less than 3 months.

3

Answer:

2. (b)

(i) 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 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.

(ii) 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

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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.

(iii) Any person aggrieved by an order made by the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal under Section 19 (1) of the Foreign Exchange Management Act, 1999. Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Special Director (Appeals) is received by the aggrieved person shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed.

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(iv) According to the provisions of Section 180(1)(c) of the Companies Act, 2013 there are restrictions on the borrowing powers to be exercised by the Board of Directors. Hence the Board of directors of a company shall exercise the power to borrow moneys, if money already borrowed, together with the moneys to be borrowed will exceed the aggregate of paid-up capital and free reserves of the company, only with the consent of the company by a special resolution. While calculating the limit, the temporary loans obtained by the company from its bankers in ordinary course of business are not considered as borrowings. Temporary loans would mean loans repayable on demand or repayable within 6 months of the date of the loan.

In the given case the proposed borrowing of `15 crores, would exceed the limit mentioned above and hence it is beyond the powers of the Board of Directors.

(v) **Notice of Board meeting**

Section 173(3) of the Companies Act, 2013 makes it mandatory for every director to be given proper notice of every board meeting. It is immaterial whether a director is interested or not.

(a) **An Interested Director:** Notice must be given to a director even though he is precluded from voting at the meeting on the business to be transacted

(b) **A Director who has expressed his inability to attend a particular Board Meeting:** In terms of section 173(3) even if a director states that he will not be able to attend the next Board meeting; notice must be given to that director

(c) **A director who has gone abroad:** A director who has gone abroad is still a director. Therefore, he is entitled to receive notice of board meetings during his stay abroad.

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The Companies Act, 2013, allows delivery of notice of meeting by electronic means also. This is important because the Companies Act, 2013 permits a director to participate in a meeting by video conferencing or any other audio visual means.

(c) (i) Mr. Rahul, an investor is not satisfied with the dealings of his stock broker who is registered with Chennai Stock Exchange. Mr. Rahul approaches you to guide him regarding the avenues available to him for making a complaint against the stock broker under Securities and Exchange Board of India Act, 1992 and also the grounds on which such complaint can be made. You are required to briefly explain the answer to his queries. 5

(ii) Amity Bank Limited is not managing its affairs properly. Employees as well as depositors of the bank have complained to the Central Government from time to time about such mismanagement and requested the Central Government to acquire the undertaking of the Banking Company. Explain the powers of the Central Government in this regard under the Banking Regulation Act, 1949. 4

(iii) Explain the Constitution of Regional Load Despatch centre as per Section 27 of the Electricity Act, 2003. 3

(iv) As per the opinion formed by the Central Government, that Mr. Anant has abused his position as a member of Competition Commission of India, which may be prejudicial to public interest as a member of the Commission. Examine the powers of the Central Government in this regard. 3

Answer:

2. (c)

(i) Securities and Exchange Board of India (SEBI) was established for regulating the various aspects of stock market. One of its functions is to register and regulate the stock brokers. In the light of this, Mr. Rahul is advised that the complaint against the erring stock broker may be submitted to SEBI.

The grounds on which or the defaults for which complaints may be made to SEBI are as follows:

- (a) Any failure on the part of the stock broker to issue contract notes in the form and manner specified by the stock exchange of which the stock broker is a member.
- (b) Any failure to deliver any security or any failure to make payment of the amount due to the investor in the manner within the period specified in the regulations.
- (c) Any collection of charges by way of brokerage which is in excess of the brokerage specified in the regulations.

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- (ii) Under Section 36AE of the Banking Regulation Act, 1949, if the Central Government is of the opinion that a Banking company has failed to comply with the direction given by RBI relating to policy matters under section 21 and 35A and or the affairs of the Bank are being managed in a manner detrimental to the interest of depositors or that of the banking policy or for better provision of credit generally or of credit to any particular section of the community or in any particular area; it is necessary to the Government may after consultation with RBI, by notified order, acquire the undertaking of a Banking Company. In such a case, on the date specified in the notification, the undertaking of the Banking Company and its assets and liabilities shall stand transferred to and vest in Central Government. Before acquiring the undertaking, the Central Government shall give a reasonable opportunity of hearing to the Banking Company.
- (iii) Constitution of Regional Load Dispatch Centre (section 27)
- (1) The Central Government shall establish a centre for each region to be known as the Regional Load Dispatch Centre having territorial jurisdiction as determined by the Central Government in accordance with section 25 for the purposes of exercising the powers and discharging the power and discharging the functions under this Part.
- (2) The Regional Load Dispatch Centre shall be operated by a Government Company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government:
- Provided that until a Government company or authority or corporation referred to in this sub-section is notified by the Central Government, the Central Transmission Utility shall operate the Regional Load Dispatch Centre.
- Provided further that no Regional Load Dispatch Centre shall engage in the business of generation of electricity or trading in electricity.
- (iv) Section 11(2) (e) of the Competition Act, 2002 empowers the Central Government to remove by an order, a member of the Competition Commission of India from his office if such member has abused his position as to render his continuance, in office prejudicial as a member of competition commission. However provision of Section 11(3) of the said act puts some restrictions on such powers of the Central Government. According to this section, in case as stated in the question, Central Government wants to remove a member or the Competition Commission from his office on the above ground, it has to make a reference to the Supreme Court- The Supreme Court shall hold an enquiry in accordance with the procedure formulated by it and then report that the member in question ought to be removed from his office on such ground. Thus the Central Government can remove a member of Competition Commission from his office by following the above procedure.

(d) (i) State the conditions which must be satisfied before filing a petition under Section 397 of the Companies Act, 1956 for prevention of oppression.

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(ii) The Board of Directors of Bharat Ltd. has a practical problem. The registered office of the company is situated in a classified backward area of Maharashtra. The Board wants to keep its books of account at its corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Advise. 3

(iii) XYZ 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 XYZ Company was a private company? 3

(iv) With reference the provisions of Insurance Act, 1938, what do you mean by 'Life Insurance Business'? 3

Answer:

2. (d)

(i) The conditions which are required to be satisfied before filing a petition under Section 397 of the Companies Act, 1956 can be enumerated as follows: ;

(I) An application under the said section 397 can be made only by the members. In the case of a company having share capital of minimum one hundred members or one-tenth of total number of members of the company, or member(s) holding not less than one tenth of the issued share capital of the company, whichever is less can file such petition. In case of a company not having share capital, minimum one-fifth of the total number of members of the company is required for the purpose. However, Central Government may authorize any lesser number of members to file such petition.

(II) It must be established that the affairs of the company are being conducted in a manner (a) oppressive to any member/members of the company or (b) prejudicial to public interest.

(III) The oppression complained of must affect a person in his capacity as a member of the company. Rights and interests as a member of a company can only be agitated and not in relation to any commercial relation that a member has with-the company as was decided by the Company Law Board in the case of Anil Gupta vs. Mirai Auto Industries Ltd. [(2003)113 COMP. CAS.63].

(IV) The acts complained of must be continuing acts of oppression. The acts constituting oppression must continue till the date of making the application.

(V) The applicant must make out a prima facie case that the degree of oppression is so severe that there is just and equitable ground for winding up of the company. But at the same time, it must also be established that the winding up of the company would unfairly prejudice the applicant.

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(VI) It may be noted that expression "issued share capital" in section 399(1) includes both the preference and equity share capital-

- (ii) The proviso to section 128(1) further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where 'such a decision is taken, the company shall, within seven days thereof, file with the Registrar 'a notice in writing giving the full address of that other place.

Therefore, the Board of Bharat Ltd. is empowered to keep its books of account at its corporate office in Mumbai by following the above procedure.

- (iii) 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.

- (iv) As per section 2(11) of the Insurance Act, 1938, Life Insurance Business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include:

(a) The granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance.

(b) The granting of annuities upon human life; and

(c) The granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons.

(e) (i) M/s XYZ Limited is being wound up by the Court. The official liquidator after realisation of the assets has an amount of ` 56,00,000 at his disposal towards payment of creditors of the company.

Details of creditors are as under.

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(i)	Dues to secured creditors	40,00,000
(ii)	Dues to workers	30,00,000
(iii)	Taxes and duties payable to Government authorities	4,00,000
(iv)	Unsecured creditors	80,00,000

Since the available amount is insufficient to meet the claims of all the creditors, explain the procedure to be followed for payment of dues as provided in the Companies Act, 1956, assuming that the company has created a charge on all the assets of the company in favour of the secured creditors. 4

(ii) What are Special Courts? What are the powers of Special Courts with respect to offence of Money Laundering? Discuss with reference to the Prevention of Money Laundering Act, 2002. 4

(iii) The members of XYZ Limited decided to pass a resolution for appointing Mr. Smith as an independent Director of the company. Draft a specimen resolution to be passed at the said meeting. 2

(iv) Explain the provisions regarding restriction on non-cash transactions involving directors as covered under the Companies Act, 2013. 5

Answer:

2. (e)

(i) Section 530 of the Companies Act, 1956 lays down the procedure for payment of debts out of available funds with the Official Liquidator. However, Section 529A provides for overriding of the preferential payments as mentioned in Section 530. According to Section 529A, notwithstanding anything contained in other provisions of this Act or any other law for the time being in force, in the winding up of a company,

(a) workmen's dues; and

(b) Debts due to secured creditors to the extent such debts rank pari passu with workmen's due.

The above debts have to be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

In this light of the legal provisions explained, the funds available with the Official Liquidator are not even sufficient to meet fully the dues payable to secured creditors and workers. Thus, tax dues to the tune of `4,00,000 payable to Government authorities will not get any payment even though they are to be considered as preferential payments as per section 530 of the Act. The secured creditors dues and workmen dues will get abated equally and they get ` 32 lakhs and `24 lakhs respectively. The other

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creditors will get nothing.

- (ii) The provisions relating to Special Courts are contained in section 43 of the Prevention of Money Laundering Act, 2002, as explained below:

A. Power of Central Government to designate Special Court (s) [Section 43(1)]:

The Central Government, in consultation with the Chief Justice, of the High Court shall, for trial of offence punishable under section 4 by notification designate one or more courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

In this sub-section, 'High Court' means the High Court of the State in which a Sessions Court designated as Special Court was functioning "immediately before such designation.

B. Power of Special Court to try any other offence [Section 43 (2)]

While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973: Be charged at the same trial.

- (iii) **Appointment of Independent Director – Ordinary Resolution**

"RESOLVED that pursuant to the provisions of Sections 149, 150, 152 and any other applicable provisions of the Companies Act, 2013 and the rules made there under (including any statutory modification(s) or re-enactment thereof for the time being in force) read with Schedule IV to the Companies Act, 2013, Mr. Smith (holding DIN), Director of the Company who retires by rotation at the Annual General Meeting and In respect of whom the Company has received a notice in writing from a member proposing his candidature for the office of Director be and is hereby appointed as an Independent Director of the Company to hold office for five consecutive years for a term up to, 20...."

- (iv) **Restriction on non-cash transactions involving directors [Section 192]**

(1) No company shall enter into an arrangement by which -

(a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or

(b) the company acquires or is to acquire asserts for consideration other than cash from such director or person so connected,

Unless prior, approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution In general meeting of the holding company.

(2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the asset Involved in such arrangement duly

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calculated by a registered valuer.

- (3) Any arrangement entered into by a company or its holding company in contravention - of the provisions of this section shall be voidable at the instance of the company unless—
- (a) the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
 - (b) any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

SECTION C

3. Answer any two questions: 10×20=20

- (a) (i) 'Conflicts of interest are a major challenges to the establishment and maintenance of goods governance practices'. Explain. 5**
- (ii) Explain the role of risk and uncertainty in whole life costing? 5**

Answer:

3. (a)
- (i) Conflicts of interest are a major challenge to the establishment and maintenance of good governance practices, and can occur and exist irrespective of the ownership structures. While some of the conflicts may be similar in nature, others may be typical to the type of ownership structure.
- Most of the conflicts of interest in PSUs occur because of the roles played by bureaucrats and politicians in the running and management of the enterprise. For example, politicians or bureaucrats may try to have their candidate as the chairman and/or managing-director in order to push through their private agendas rather than getting the best professional to run the PSU. There have also been many instances where the chairman and/or managing director, or other senior executives of the PSU has placed orders or awarded contracts at rates higher than the best prices and earned hefty commissions on these orders or contracts may also be given to those who do not have the necessary capabilities to execute them. What is best for the PSU usually gets neglected. There may also be issues such as ministers or politicians yielding to recommendations of their cadre and sometimes even creating positions or designations that are not at all needed, leading the PSU to have a bloated workforce and driving it into the sick category.
- (ii) Attention has been drawn to the Importance of dealing with risk and uncertainty in WLCC analysis. This importance is reflected in the new definition. However, this leads us to a

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salient point - Is there a difference between uncertainty and risk? The scholars believe that there is a great difference. The terms risk and uncertainty are often used interchangeably, although a distinction can be drawn by noting that the concept of risk deals with measurable probabilities while the concept of uncertainty does not. An event contains an element of risk where a probability distribution can be defined. An event is uncertain when no probabilities can be developed concerning its occurrence. Risk refers to probabilities of errors in decisions and WLCC forecasts throughout the life-cycle of a project, or the probabilities of occurrence of events. Risk assessment deals with the likelihood and expectation of possible WLCC outcomes using probability concepts. If computed in terms of the probability of success or failure to achieve the return on investment, the risk is seen as an objective risk. It is an uncertainty when the probability cannot mathematically be indicated but there is enough knowledge to make a subjective judgment about the WLCC decisions. The more explicitly the risk is defined the greater the possibility for the decision maker to have confidence in using the results of the WLCC analysis.

- (b) (i) What is meant by Corporate Governance? State the measures of Corporate Governance with reference to Indian Companies. 5**
- (ii) 'CSR can mean different things to different people.' Explain. 5**

Answer:

- (b) (i) MEANING: "Corporate governance is about promoting corporate fairness, transparency and accountability. It is concerned with the structures and processes for decision-making, accountability, control and behavior at the top level of organizations. It influences how the objectives of an organization are set and achieved, how risk is monitored and assessed and how performance is optimized.

MEASURES: In general corporate governance measures include appointing non-executive directors, placing constraints on management power and ownership concentration, as well as ensuring proper disclosure of financial information and executive compensation. Many companies have established ethical and/or social responsibility committees on their Boards to review strategic plans, assess progress and offer guidance on social responsibilities of their business. In addition to having committees and Boards, some companies have adopted guidelines governing their own policies around such issues like board diversity, independence, and compensation. Indian companies are also required to comply with clause 49 of the listing agreement.

- (ii) Corporate Social Responsibilities (CSR) is an integrated combination of policies, programs, education, and practices which extend throughout a corporation's operations and into the communities in which they operate, about how companies voluntarily manage the business processes to produce an overall positive impact on society. CSR can mean different things

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to different people:

- ❖ for an employee it can mean fair wages, no discrimination, acceptable working conditions etc.
- ❖ for a shareholder it can mean making responsible and transparent decisions regarding the use of capital.
- ❖ for suppliers it can mean receiving payment on time.
- ❖ for customers it can mean delivery on time, etc.
- ❖ for local communities and authorities it can mean taking measures to protect the environment from pollution.
- ❖ for non-governmental organisations and pressure groups it can mean disclosing business practices and performance on issues ranging from energy conservation and global warming to human rights and animal rights, from protection of the rainforests and endangered species to child and forced labour, etc.

For a company, however, it can simply be seen as responding to the needs and concerns of people who can influence the success of the company and/or whom the company can impact through its business activities, processes and products.

- (c) (i) 'Family ownership of firms is the prevalent form of ownership in many countries around the globe.' Explain. 5**
- (ii) What is meant by whole life risk responses? 2**
- (iii) Explain CSR as a quantitative analysis? 3**

Answer:

3. (c)

- (i) In many countries, family-owned firms are prevalent. Corporate governance is of relevance to family-owned firms, which can encompass a number of business forms including private and publicly quoted companies, for a number of reasons. Family-owned firms may face difficulties in initially finding appropriate Independent non-executive directors but the benefits that such directors can bring its worth the time and financial investment that the family-owned firm will need to make. One advantage of a family-owned firm is that there should be less chance of the type of agency problems. This is because ownership and control rather than being split are still one and the same, and so the problems of information asymmetry and opportunistic behavior should be (in theory, at least) lessened. As a result of this overlap of ownership and control, one would hope for higher levels of trust and hence less monitoring of management activity should be necessary. However, problems may still occur and especially in terms of potential for minority shareholder oppression, which may be more acute in family-owned firms. In family business group firms, the concern is that managers may act for the controlling family, but not for shareholders in general. These agency issues are the use of pyramidal groups to separate ownership from control the entrenchment of controlling families, and non-arm's length transactions (aka 'tunneling') between related companies that are

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detrimental to public investors.

- (ii) Developing responses to reduce WLCC risks is the third step in the integrated WLCC risk management framework. Once the building assets and the many different risks and threats to which they are exposed are identified and quantified and the related life cycle vulnerabilities assessed, necessary steps should be taken to ensure that the entire investment is protected from all sources of external and internal threats. Thus, the third stage is concerned with the identification of strategies that mitigate the effect of anticipated threats to the greatest extent possible. This should be based on universal rules like risk avoidance, risk reduction, risk absorption and risk transfer.
- (iii) The case study quantitative analysis represents an objective overview of the corporate social responsibility trends in India based on the desktop research and case study analysis of the Corporate who have responded to the request by ASSOCHAM to share their CSR efforts and initiatives, for the compendium. 27 case studies were submitted in total and out of these 24 were used as a base to deduce some directional pointers on the status of CSR and some trends In India. The analysis does not intend or aim to pass a qualitative judgment on any corporate initiative or how good or bad it is, but rather focuses on presenting a broad overview of implementing the CSR practices. It is assumed that there is an inherent bias, as the corporate that have submitted case studies are implementing the CSR in a way or other. Moreover the source of information being they (corporate) is not an unbiased source.