

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 8

NOTE : Answer ALL Questions.

1. (a) Perun Ltd submitted a scheme of demerger before Hon'ble NCLT, demerging its two divisions as two separate resulting companies. The Company in its application had mentioned that certain proceedings in relation to some other businesses of the Company are pending. Upon clarification sought, it was submitted that an investigation registered out of charge sheet lodged by special investigation team, State Lokayukta Police before Additional City and Sessions Court was pending, wherein the proceedings were stayed by the High Court. Perun Ltd argued that those proceedings have no bearing and cannot be an impediment for approval of the scheme of demerger. However, citing this the Tribunal declined to sanction the scheme of demerger. The Company appealed to NCLAT. Is the contention of the Company tenable ?

(5 marks)

- (b) Renkel RTA Services Ltd. is the Registrar to the Issue and Transfer Agent ('RTA') of Alphanso Ltd. Avan, an investor discovered that certain shares of Alphanso Ltd were held by his grandfather and accordingly he applied to the RTA seeking information on transferring the said shares in his name. Avan found some mistakes by RTA, while clearing and sorting out the old documents. He made a complaint in the SCORES Platform against the RTA. Based on the complaint, Securities and Exchange Board

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of India (SEBI) ordered investigation by its Wholetime Member (WTM). The investigation revealed several such incidents. WTM of SEBI found that the RTA was negligent and did not exercise appropriate due diligence while processing various requests and prima facie found violating Clauses 2, 3 and 16 of the Schedule III of the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 ('Regulations of 1993'). Accordingly, the WTM issued an ex-parte ad interim order prohibiting the RTA from accepting fresh clients in respect of its activities till further directions. The RTA is aggrieved by the ex-parte ad interim order passed by the WTM of the SEBI has filed an appeal.

In light of judicial pronouncements, comment whether the action of WTM of SEBI is tenable.

(5 marks)

(c) Arghya Industries Ltd. decided to file an appeal before Hon'ble NCLAT due to an Order that has been passed by Hon'ble NCLT on May 6, 2019 without consent of the parties. The Order was received by the Company on May 7, 2019. The employees of the Company went on a strike for a period of 10 days from June 25, 2019 demanding salary hike and other benefits. The operations of the Company came to a grinding halt due to the strike and other extraneous reasons. Thereafter, the Company proposed to file an appeal on July 9, 2019 before the Hon'ble NCLAT and the Company prayed for condonation of delay. The Management of the Company was planning to seek professional help on the following queries :

- (i) Whether the proposed appeal would be admitted by the NCLAT.
- (ii) What is the maximum period allowed by the NCLAT for condonation of delay ?

As a Practising Company Secretary, advise the Management of the Company.

(5 marks)

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- (d) Omkar Infrastructure Ltd. was engaged in construction and development of infrastructure related projects. Due to the liquidity and other management issues the Company was making losses since last few years. The minority shareholders of the Company filed a class action suit in the Tribunal alleging that the affairs of the Company are being conducted in a manner prejudicial to the interest of the Company. The Tribunal passed an Order restraining the Company from taking action contrary to any resolution passed by the members. The Company failed to comply with Order passed by the Tribunal. Explain in brief, whether the Order passed by the Tribunal is justified and what legal consequences will the Company have to face in case of such non-compliance.

(5 marks)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (a) Raji, was holding 1,10,000 equity shares in Mahanav Industries Ltd. After Raji's death, her legal heir Raman applied for transmission of the shares in his name while the application for Succession Certificate was pending before the Civil Court. The Company allotted these shares to someone else. Raman contends that it is an act of mismanagement by the Company.

Evaluate in context of a judicial pronouncement.

(4 marks)

- (b) Zurik Ltd and its Directors were charged with certain offences under Criminal Procedure Code and in the meantime, the Registered Office was shifted from Kochi to Trivandrum. The Form filed for shifting of registered office is still under process by MCA. Meanwhile, the Authorised Officer of the Court wanted to issue summons.

Explain which is the proper address for service of summons under Criminal Procedure Code.

(4 marks)

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- (c) A Director appointed under Prevention of Money Laundering Act, 2002 authorises his subordinate to carry out the search of certain records. The subordinate caught a Vehicle and since the Vehicle was locked, he calls the mechanic to break the locking system to open it. However, he found nothing inside the car. Discuss whether a Director can authorise his subordinate to do such acts, if yes, whether the acts of subordinate are tenable.

(4 marks)

- (d) At a General Meeting of RigVed Ltd, a resolution was passed as an ordinary resolution, whereas it is required to be passed as a 'special resolution' under the Companies Act, 2013. Ved, an individual shareholder of the Company wants to bring a legal action on the Company, to restrain it on the subject matter of the said resolution. In background of a decided case law, evaluate whether the contention of Ved is tenable.

(4 marks)

OR (Alternate question to Q. No. 2)

- 2A. (i) "Mere breach of contract cannot give rise to criminal prosecution under section 420 unless fraudulent or dishonest intention is shown, right at the beginning of transaction when the offence is said to have been committed." Explain.

(4 marks)

- (ii) 'The shareholder's democracy not only can play important role in stimulating the Board of Directors, raising Company's performance but also ensuring that the community at large takes a greater interest in industrial progress.' Comment.

(4 marks)

- (iii) Section 442 of the Companies Act, 2013 enables settlement of dispute through 'alternate dispute resolution' – In this context, highlight the differences between mediation and conciliation.

(4 marks)

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- (iv) 'Directors resemble trustees, equity prohibits a trustee from making any profit by his management, directly or indirectly. It is objectionable to use such power simply or solely for the benefit of directors or merely for an extraneous purpose like maintenance or acquisition of control over the affairs of the Company'. Explain with reference to a case law.

(4 marks)

Attempt all parts of either Q. No. 3 or Q. No. 3A

3. (a) In background of decided case laws, comment whether the following instances amount to oppression or mismanagement with brief reasoning :
- (i) Filing of unaudited Balance Sheets
 - (ii) Non holding of the meetings of the Board.
- (b) State whether the following offences under the Companies Act, 2013 are compoundable, if yes, also mention the Compounding Authority :
- (i) Failure to comply with the provisions relating to transfer and transmission of securities.
 - (ii) A Company fails to repay the deposit or part thereof or any interest thereon within the time specified or such further time as may be allowed.
 - (iii) Failure to distribute dividend within thirty days.
 - (iv) Contravention of provisions relating to charges.
- (c) Amexo International Ltd. is aggrieved by the Order of Deputy Director of Enforcement Directorate (ED), and is evaluating to seek further remedies in this regard. Advise the Company regarding the Appellate jurisdiction under FEMA and also explain in brief the procedure for making such Appeal.
- (d) 'Financial Service Sector is emerging across boundaries.' In this context, explain in brief International Financial Service Centre and its Regulator.

(4 marks each)

OR (Alternate question to Q. No. 3)

3A. Write short notes on :

- (i) Disgorgement
- (ii) Mistake apparent from the record
- (iii) Importance of Strong Internal Controls
- (iv) Powers of Inspector under the Factories Act, 1948.

(4 marks each)

4. (a) Paras finds that his name is mis-spelt in his property document, so he makes the correction and keeps the document with himself. A year later, he tries to sell his property and delivers the copy of the document to the proposed buyer. The Advocate of the proposed buyer informs him that the document is a forged document. Evaluate whether this act of Paras amounts to forgery.

(4 marks)

(b) Adjudication Officer under the Companies Act, 2013 has sent notice to the Alaya Ltd alleging that the Company had committed certain offences under the Companies Act. The provisions referring the offences as alleged by Adjudication Officer do not contain any penal provisions. The Management of Alaya Ltd contends that, as no punishment is prescribed under the Act, there is no violation by the Company. Is the contention of the Company valid ?

(4 marks)

(c) Registrar of Companies (ROC) has sent a Notice to a Company alleging default under Section 92(4) and Section 137(2) of the Companies Act, 2013. On receiving the notice, the Company immediately arranges to file the respective Forms>Returns and communicates within 30 days of the notice that the it has made good the default. However, the ROC proceeded to prosecute the Company for non-compliance under the aforesaid Section.

Is the action of the Registrar justified ? If so, what may be the penalty for such non-compliances ?

(4 marks)

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(d) 'Unlike the Consumer Protection Act, 1986 which permitted a class to initiate a case before a consumer commission in cases of mis-selling, the Consumer Protection Act, 2019 provides for different solution'. Explain whether the new mechanism provided under the Consumer Protection Act, 2019 will strengthen the class action or will dilute the class action suits.

(4 marks)

5. (a) 'Fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. To clearly understand the term 'fraud' in reference of penalizing, preventing and regulating this act, one should be well-versed with the elements of fraud'. Comment on this statement by detailing essential elements of Fraud.

(b) 'Risk Management should be tailored to the specific Company, but generally Risk Management system should provide for ways to identification of material risks, implementation of appropriate risk management strategies and transmission of necessary information to the senior executives of the Company for their appropriate Actions'. Explain the actions which a Board and Committee should consider a part of their risk management oversight.

(8 marks each)

6. (a) A GST Assessing Officer authorised by the Commissioner enters a shop in bazaar and purchases some goods and demands for invoice of the goods he purchased. He checks the invoice, for its correctness and then returns the goods and asks for cancellation of the bill. Whether an officer has power to purchase the goods, just to check issue of tax invoice ? Whether he can demand cancellation of bill and return of amount for such purchases ?

(4 marks)

- (b) An offence under the Companies Act, 2013 was compounded by the Company and Compounding order was issued by the Compounding Authority specially for offences by the Company and the Directors of the Company as officer in default. The Company has paid the Compounding Fee. However, one of the Director, who is also a party to the Compounding as officer in default feels that compounding fee is high and he would like to go for an Appeal.

Evaluate whether the Director will be allowed to make an appeal. Also indicate the penal provision for non-compliance of compounding orders.

(4 marks)

- (c) Surasandhya, is a Practising Company Secretary specialising in Corporate and allied laws. One of her clients approached her, seeking inputs on value of penalty/fine payable for certain offences committed by his Company. He wants to understand the factors which are considered in deciding the quantum of penalty.

Outline the factors considered while deciding the quantum of penalty.

(4 marks)

- (d) Officers from Income Tax Department have seized some assets and money from Gul Ltd.'s premises. After one year of such seizure the assessment was completed by the Income Tax Department and the outstanding tax demands were met out from the sale of assets. Gul Ltd. claims interest from the Income Tax Department for the assets and monies seized, as more than one year has elapsed from seizure.

In background of provisions of Income-tax Act, is the claim of the Company justified ?

(4 marks)

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