

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 12

NOTE : Answer ALL Questions.

1. (a) Helpway, was an NGO supporting various causes including the legal support, needed by any deprived. Kechar, was an engineering drop out, who was very skilled in developing applications ('app'). He developed an app for the NGO to gather information about poor kids, aged people, etc., who may need help and support, however he was not able to host it on playstore, for downloading by public. The NGO alleged that Hyper Ltd. (a leading brand) is using a barrage of anti-competitive restraints and abuse of dominant practices in markets for distribution of apps to users of smartphones, tablets and processing of consumers' payments for digital content used within mobile apps ('in-app content'). The NGO averred that Hyper Ltd. imposes unreasonable and unlawful restraints on app developers from reaching users of its mobile devices unless they go through the 'App Store' which was stated to be controlled by it. Further, Hyper Ltd requires app developers who wish to sell digital in-app content to their consumers to use its in-app payment solution i.e. In-App Purchase (IAP) which carries a 20 per cent commission which is 10 times higher as compared to open market rates. NGO alleged that such restrictive practice and charge of exorbitant price amounts to abuse of dominant position in the Competition Act. NGO further asserted that, Hyper Ltd. enjoys a dominant position in the market for non-licensable mobile OS for smart mobile devices as well as in the relevant market for app store in India.

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Hyper Ltd's App Store was the only approved App Store for iOS devices. App developers have no other alternative except Hyper Ltd's App Store through which they could reach users of iOS. Thus, it was stated to have a monopoly in the iOS app distribution market. NGO had alleged that Hyper Ltd prevents iOS users from downloading app stores or apps directly from websites; pre-installs its own App Store on every iOS device it sells; disables iOS users' ability to remove the App Store from their devices; and conditions all app developers' access to iOS on the developers' agreement to distribute their apps solely through the App Store and not to distribute third-party app stores.

In the light of judicial pronouncement, comment if the appeal of NGO would be allowed before Competition Commission of India (CCI).

(5 marks)

- (b) The Assessing Officer received a tip-off about certain transactions happening in a famous café named, The Friends Joint, which could probably lead to some evidences he was looking for. This café was within the Assessing Officers jurisdiction and he found it little weird, that the café is open between 1 AM to 1 PM. He went to the café at night 12.30 PM for a survey, as he was expecting to collect information which may be useful in assessment under the Income-tax Act, 1961. He inspected the books of accounts and other documents and retained them in his custody for 12 days, after recording the reasons in writing. Meanwhile, the owner of the Café contended that, the Assessing Officer's action of entering the Café is not as per the Income-tax Act 1961. Is his contention valid ?

(5 marks)

: 3 :

- (c) SEBI investigated the activities of Kamalai, an individual stock trader. During the investigation, it was found that Kamalai was putting orders, ahead of orders placed by Pointed Ltd. Vimalai, was the portfolio manager of Pointed Ltd., who also happens to be a cousin of Kamalai and Tharen. It was alleged that Vimalai provided information to Kamalai and Tharen regarding forthcoming trading activity of the Pointed Ltd. These trades were executed using the telephone number registered in the name of Tharen, at the common residential address of Vimalai and Tharen. Taking advantage of the information received from Vimalai, Kamalai had indulged in trading before the Pointed Ltd and consequently squared off the position when the order of Pointed Ltd were placed in the market. It was estimated that Kamalai earned a total profit of ₹ 1.5 crores from the alleged trades. Despite the evidence on record, Kamalai pleaded that it was a coincidence. With reference to a judicial pronouncement, comment if SEBI's action is justified.

(5 marks)

- (d) Kimona Luxury Private Ltd, is a company dealing in trading of luxury lifestyle products like writing instruments, expensive watches, high end leather products, tech products like headphones and other accessories having 10 boutique stores in high end luxury malls and five start hotels across the country. As a policy, the Company ensures compliance with all the applicable regulatory and legal requirements. To be customer friendly and increase sales, Nainaj, a sales associate in one of the stores, regularly accepted payment in cash from customers and swiped his own credit card against purchase, to record the payment against such purchase. With this practice, he was able to get credit period of 45 days on swiped transaction and get instant cash for

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his personal use. This unethical practice was unnoticed until the Bank's credit risk team blocked all the credit card swiping machines installed at the stores due to a suspicious transaction of high value. Over and above, Nainaj used to exchange cash collected from customer with fake notes and deposit them with Company's banker, so that gradually fake notes come into circulation. One of the customers recorded this on his mobile phone, shared it on the social media and it went viral within a very short span of time. The Company ordered a forensic audit to examine the details of such transactions. Meanwhile, the matter also received attention from Central Government, and the Central Bureau of Investigation (CBI) was asked to investigate the fraud. Can CBI investigate such matters ? Comment.

(5 marks)

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

2. (a) Joint Commissioner of Goods and Services Tax based on the returns filed by Bhojraj, a taxable person is of the opinion that he has suppressed some transactions relating to goods/services and also claimed input tax credit in excess of his entitlement under the Goods and Services Tax Act. He issued a letter authorizing the GST Officer to inspect Bhojraj's premises. Bhojraj did not allow the GST officer to enter his place of business, as he claimed that authorization is faulty and it is not tenable u/s 67 (1) of the Central Goods and Services Tax Act, 2017 . In the background of CGST Act, examine the validity of Bhojraj's action.

(4 marks)

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- (b) Swayam and Shubham are two directors of Shuyam Medical Consultancy Private Ltd., Hyderabad. Swayam was authorized by Board of directors to prepare and file returns, reports and other related information and documents to Registrar of Companies (RoC) within due date on behalf of the Company. While preparing returns, he did not mention the fact that the Company also had export income which formed part of revenue and filed the return. Subsequently, RoC found that a material fact is omitted in the information provided in the return. Upon probing, RoC came to know that, Swayam intentionally omitted to mention those facts in the return filed. Explain the consequences of Swayam's action under Companies Act, 2013.

(4 marks)

- (c) Ruhi, Managing Director of Forever Sisters Private Ltd, was the founder of the Company along with her sister and few other friends. The Company was doing well initially, they had raised few rounds of funding from angel investors. After couple of years, Ruhi, was inflating the revenue to honour her commitment to the investors and this continued for more than one year. The investors had a suspicion about the Company's operation and an external audit was conducted, wherein the fraud committed by Ruhi was identified. The investors filed a case against Ruhi for the fraud perpetrated by her. After going through legal challenges for six months, Ruhi wants to settle the case through mediation or conciliation. Referring to the provisions of Companies (Mediation and Conciliation) Rules, 2016, evaluate whether Ruhi will be able to get the case settled through mediation or conciliation.

(4 marks)

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- (d) Prem, the CEO of Pranani Cements Ltd., a cement manufacturing company was allotted an Audi car during the tenure of his employment. He had retired on 31st January, 2023. As per the terms of his employment, he was required to return the car within three months of his ceasing to be in employment i.e., 30th April, 2023. He used his good offices to seek one-year time to return the car to the Company. The Company secretary of the Company was informed about this by one of the Directors. Advise the Company about the actions it can take in such situation.

(4 marks)

OR (Alternate question to Q. No. 2)

- 2A. (i) Snowcap Ltd is aggrieved by an order of National Company Law Appellate Tribunal (NCLAT). On 'question of law', the Company wants to file an appeal against the order and approaches you, a Practising Company Secretary.

Advise the Company :

- (a) On the possibility of filing appeal on the basis of question of law
(b) As to where that appeal can be filed and
(c) Limitation period of the appeal against the order.

(4 marks)

- (ii) Due to some untoward circumstances, Varenia Ltd could not hold Annual General Meeting (AGM) within due date. Audited Financial Statements along with Auditors' Report were not placed at the meeting and later Company failed to file with the Registrar, the Annual Return and copies of Financial Statements within the specified period following AGM. Directors of the Company contended that these are series of offences, but they should be combined into one single offence as they are linked to each other and have continuity of action. With reference to a judicial pronouncement, evaluate whether the contention of the Directors of the Company is appropriate.

(4 marks)

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(iii) Varah was a Director on the Board of Karunya Jewellers Ltd. The Company was planning to appoint two other directors, one independent director and another executive director. After due procedures, the new directors were appointed and they were familiarized with the operations of the Company. In one of the conversations with a friend, Varah was saying the kind of power, Directors wield in the functioning of the company puts them in a position, where it is not difficult for them to bend the rules and due to this, it is quite possible that they may be involved in fraudulent activities. His friend asked him, if he was upto doing some fraud in Karunya Jewellers Ltd, for which Varah laughed and said I am not doing anything like that, but even if I do it will make other directors liable especially non-executive and independent directors. In the background of Companies Act, 2013, comment whether Varah's perspective is appropriate.

(4 marks)

(iv) Namar was appointed as Director (Engineering) in BHAL Ltd. Though he was from engineering background, he had a liking to understand the legal aspects. He had read well about the procedures but required some clarity. In one of the conversations, he asked Company Secretary to brief him about criminal courts in India and their powers. He also asked how Section 435 of Companies Act, 2013 deviates itself from CrPC in Indian Legal System. Prepare a note in this regard.

(4 marks)

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

3. (a) Explain whether the following offences under the Companies Act, 2013 are compoundable, if yes, by whom ?
- (i) Fraudulently issuing of duplicate share certificate by a company;

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- (ii) Disobeys the direction issued by the Registrar or Inspector under Companies Act ;
- (iii) Company Secretary in practice certifies the Annual return otherwise than in conformity with the requirements of Section 92 or the Rules made thereunder;
- (iv) Functioning as a Director after vacation of office.

(4 marks)

- (b) Amin, Director of Tituto Ltd was penalized by Regional Director (RD) for an offence committed by him under the Companies Act, 2013. There were proceedings before the penalty was levied on Amin. However, Amin had not learnt his lessons, and he ended up committing the same offence again. This time the matter was again noticed and it went to the RD. The concerned RD penalized him again, but Amin challenged the decision of RD stating that he cannot be penalized for the same offence. In the background of provisions relating to adjudication of penalties, comment whether Amin's contention is correct.

(4 marks)

- (c) Jeyan, filed an application before Usurla Ltd, for transmission of equity shares held by his father. Jeyan provided the documents requested by the Company for transmitting the shares in the name of his deceased father to himself and his sister Jaya. He received a communication from the Company that the process of transmission has been completed. However, he noticed that his name was not included as 'member' despite providing all the documentation. He filed a petition against the Company for omitting his name from Register of Members 'without sufficient cause'. Discuss and interpret the words 'without sufficient cause' in the background of judicial pronouncements.

(4 marks)

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- (d) Suraj, a public servant was accused of neither depositing nor making entries of Stationery and other inventory required for official purpose. He was in charge of the store in the concerned department at the time of commission of offence. He was accused of committing criminal breach of trust. Can Suraj be held liable for committing criminal breach of trust ? Comment.

(4 marks)

OR (Alternate question to Q. No. 3)

3A. Write short notes on the following :

- (i) Shareholder activism
- (ii) Whistle blowing and Operational reporting system
- (iii) Legal compliance programs
- (iv) D & O Insurance for Non-Profit Organisations.

(4 marks each)

- 4.** (a) 'Public prosecutors are to be independent, unbiased and impartial while conducting prosecution.' Explain the distinction between Public Prosecutors and Company Prosecutors.
- (b) 'Minor defects in order or judgement will not rescue a prosecution which is *void ab initio*.' Explain.
- (c) 'Class action suit is a new mechanism in India to claim the loss caused to the specified stakeholders of the Company, not only from the Company but also from other entities.' Explicate.
- (d) 'No warrant can be issued for recovery of fines.' Elucidate.

(4 marks each)

5. (a) Niruthan and Vanithan, were two close friends and IITians. They had founded a company together called ValuIn Technologies Private Ltd, which was a start-up. The Company started to grow in terms of its service offerings and so did its value. It also got some institutional investors who were planning to invest in the Company. For the purposes of due-diligence, the investors appointed KnowY Consultants LLP. The Consultants reviewed the documentation and other aspects and carried out a detailed due-diligence. During their review, it was noticed the Company had not made certain filings in a timely manner and missed filing few documents with the Registrar. The Senior Manager of KnowY, a close friend of Niruthan, informed him about the non-compliances and suggested that, these should be rectified at the earliest. Niruthan reached out to Kanak, a Senior Company Secretary for his inputs on this matter. Kanak suggested that, compounding of offences would be appropriate at this juncture to ensure we correct the non-compliances. However, Niruthan, was apprehensive as compounding would indicate that they are guilty. Kanak explained to him that, compounding is an admission of guilt either voluntarily or on receipt of notice of default or initiation of prosecution. Thus, it can be said that Compounding is essentially a compromise or arrangement between the administrator of the enactment and person committing an offence. In this background, prepare a detailed note, explaining the need for compounding, key benefits of compounding and the process for compounding an offence.

(8 marks)

- (b) Prethona Financial Services Ltd., was a company providing financial services, and had offices located across all the major cities in India. Considering the nature of the industry it was functioning, the Company required funds to expand its operations to the Tier II and Tier III cities in India. The management was evaluating various options to raise funds including public offer of its securities. They appointed consultants to support

them in this process. After due deliberations, the Company finalized that it would go for IPO in next two years and the finance team was asked to do the ground work for the same. As a part of preparatory activities, they also appointed Rakshak on the Board of the Company as a Director, who was on board of many global corporates. In one of the meetings with the management and the consultants, Rakshak recommended that the board needs to design a risk management system which is critical for its risk oversight. In this context, he requested the consultants to do a detailed study of corporate governance issues and risk management intricacies in financial institutions. You are part of the consultant team, and the manager asks you to prepare a detailed note on common risk management issues in relation to corporate governance in financial institutions and review mechanisms which are necessary for the Board of Directors.

(8 marks)

6. (a) An investigation has been initiated against Terla Mart Private Ltd under section 210 of the Companies Act, 2013. Mohana, the Managing Director of Company, was of the view that the Company has not committed any default or offence, hence no documents need to be furnished for inspection. She also refused to produce books of accounts before the inspector and did not obey the direction issued by the inspector. She discussed the matter with her friend Suhana, a Company Secretary, who informed her that she would have to face penal consequences for refusing to furnish the books of accounts to the inspector. Explain the penal provisions, which Mohana may have to face under the Companies Act, 2013.

(4 marks)

- (b) Meroz is accused for certain violations under SEBI Act, 1992. While prosecution is in progress, SEBI observed that she has been co-operating in the inquiry and has

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made full and true disclosure of facts in respect of the alleged violations. Convinced by her behavior and approach, Board recommends Central Government to grant her immunity from prosecution for any offence. In this background, answer the following :

- Can Board make such recommendation to Central Government ?
- Is such recommendation binding on Central Government ?
- What if after getting immunity from prosecution for such offence, Central Government came to know that true disclosure made by her to Board were actually false disclosure ?

(4 marks)

- (c) Apramey is a qualified Company Secretary and is employed in SEBI as rank of a Division Chief . While conducting an enquiry, he noticed that IIL Ltd, a stock broking firm had failed to issue contract notes in the form and manner specified by the stock exchanges of which it is a member and also charges an amount of brokerage which is in excess of the brokerage specified in the regulations. SEBI asked Apramey to issue notice to IIL Ltd. for penalties. Briefly explain the penalty which can be levied on IIL Ltd. and the factors to be considered while adjudging quantum of penalty.

(4 marks)

- (d) Meharban was involved in developing an online betting app. He was also actively involved in other activities like online cricket betting and gambling activities, in relation to which he committed acts which constitutes money-laundering. Rafi, his close aid and confidante worked closely with Meharban and was aware that the funds he used for the purposes of betting was not legal. Rafi had a fight with Meharban on some trivial issue, for which he was so angry, that he went and informed about his activities by way of anonymous letters to various regulators. Upon receipt of information, the Directors authorised under Section 17 of Prevention of Money Laundering Act, 2002 went to conduct search and seizure procedure in Meharban's premises, under the Act. Meharban contended that the Directors authorised, did not have the jurisdiction to conduct search. Is Meharban's contention justified ?

(4 marks)

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