

*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) Rahul and Rachna are husband and wife. They incorporated a Private Ltd. Company in the name of RR Industries Pvt. Ltd. The paid-up capital of the company was ₹ 50 lakh, which they have contributed equally. The shares were held by them in their individual capacity. The Company's Board of directors consists of 10 directors. Rachna was designated as Managing Director (MD) and Chief Executive Officer (CEO) of the company and other directors were her father, mother, two brothers. The Rahul's father and mother were also occupying the position of director. Rest of the three directors were friends of Rachna. Rahul's status was only as a shareholder of the company, since he was engaged in the employment, occupying a good position there.
- After some time, due to some domestic issues, Rahul and Rachna got judicially separated (divorced). After getting divorced from Rahul, Rachna expelled the father and mother of Rahul from occupying the position of directorship from the company and inducted her relatives as directors. Rachna now started playing with the funds of the company for her personal use.
- Now Rahul want to file an application with the National Company Law Tribunal (NCLT) for relief against oppression and mis-management prevailing in the company.
- Whether Rahul can do so ? Quote the relevant provisions of the Companies Act, 2013.

(5 marks)

: 2 :

- (b) Arun, an individual shareholder of M/s. BEL Ltd. is holding 2% of the voting rights. He made a complaint before the Adjudicating Authority that investments proposed to be made by the Company are without any adequate security and prayed for injunction to restrain the company from making such investments.

Whether Arun will succeed in his attempt ? Explain with decided case law.

(5 marks)

- (c) The Registrar of Companies, Mumbai sent an order to M/s. LRM Container Services Ltd. that it would conduct investigation relating to the financial matters of the Company for the Financial Year commencing from 2016 to 2019. The management of the company after internal discussions terminated its Finance Head and three more employees of the Finance and Accounts Dept. as they were In-charge of the Dept. of the Company during the said period.

Comment on the action of the management of the company quoting the relevant provisions of the Companies Act, 2013.

(5 marks)

- (d) Raghunath was the General Manager (Forex) in a company named as Impex Overseas Ltd., during the period 1st January, 2018 to 31st March, 2020. He retired from the services of the company at the close of business on 31st March, 2020.

Later on, it was revealed that during his tenure, the company has contravened some of the provisions of the Foreign Exchange Management, Act, 1999 (FEMA) and this happened due to non-compliance on the part of Raghunath.

The Company asked Raghunath to pay the penalty, but he denied and told that he is now, not in the service of the company and the company itself, is liable to pay the penalty.

Advise the company about the legal provisions under FEMA in this regard.

(5 marks)

: 3 :

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

2. (a) During the course of Secretarial Audit, it was found that in one of the case of transmission of shares, the company took 4 months from the date of its lodgment. Discuss the provisions relating to the transmission of shares under the Companies Act, 2013.

Is there any change in the penal provision in the recent amendment made by the Companies (Amendment) Act, 2020 ?

(4 marks)

- (b) Class Action suit can be filed by the Members only; this right is not available to the depositors of the company. Do you agree with the statement ? Discuss the relevant provisions under the Companies Act, 2013.

(4 marks)

- (c) A company, engaged in the real estate business, intend to come out with Initial Public Offer (IPO), filed a prospectus with the SEBI for its approval. In the prospectus, the company mentioned that it is having land bank in Mumbai and Pune and the proceeds of the IPO shall be utilised for the construction of residential flats at such places. Ashok invested in the IPO and also got the allotment. Later on it was discovered that company was not having any land bank either at Mumbai or at Pune. At the time of the issue of the prospectus, it had only entered into an agreement with the owner of the land for its redevelopment and thereafter construction of residential flats on lease basis. However, due to some disputes, the land owner refused to company to use the land for the aforesaid purposes.

What recourse is available to Ashok, who had invested in the IPO ?

(4 marks)

: 4 :

- (d) As per the provisions of the Indian Penal Code, 1860, “the offences relating to cheating, intention to deceive is to be proved and mere negligence is not cheating”. Explain the main ingredients of the offence “cheating” with relevant case laws/Judicial pronouncements.

(4 marks)

**OR (Alternate question to Q. No. 2)**

- 2A. (i) Explain the meaning of Exit Checks and Clawbacks.

(4 marks)

- (ii) The Bombay High Court ordered the CBI to conduct an investigation against a Public Sector Undertaking (PSU) Chief of the State Government who is involved in a corruption case. The State Government objected to the same as the matter is not referred to it besides no consent is obtained from the State Government in this matter. Under these circumstances, whether Central Bureau of Investigation (CBI) can proceed on its investigation ? Quote the relevant provisions of the law.

(4 marks)

- (iii) Unique Auto Products Ltd., produces electric bikes, which is a new product. Its average per km. expenses in running the bike comes under rupee One. Due to its fuel economy and low cost, it enjoys almost the monopolistic situation in the relevant market. The cost of such bike to the company comes to ₹ 60,000 and the company is able to sale it in the market for ₹ 99,000 per bike.

Looking to the announcement of the Govt of India to promote the electric bikes, some more producers entered in the market. However, due to weak demand of the electric bikes produced by other companies, the cost to these company was around ₹ 80,000 per bike.

In order to enjoy the monopolistic situation, the Unique Auto Products Ltd., reduced the prices of its bike even below its cost price, so that it may remove the other new comers in the market, in a short run.

: 5 :

The other manufactures, made complaint before the Competition Commission of India (CCI) about the predatory price technique used by the Unique Auto Products Ltd. Comment, whether CCI can take action in such a situation ?

(4 marks)

- (iv) What is Disgorgement ? Who has the power to order disgorgement and under which circumstances ?

(4 marks)

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

3. (a) PQR Ltd. failed to file return of allotment against the 16 lakh shares allotted by the Board of directors at its meeting held on 20th April, 2016 and got order for compounding of offence on 10th June, 2018. The company again failed to file return of allotment against the 11 lakh shares allotted by the Board of directors at its meeting held on 4th March, 2019. What options are available to the company in respect of this default ?

(4 marks)

- (b) SEBI issued an order against the directors of the Shyam and Company Ltd., a listed entity, against their failure to comply with the some of the provisions of the SEBI (LODR) Regulations, 2015 and levied penalty for the same.

However, the directors of the company are of the opinion the penalty levied by the SEBI for non-compliance of the provisions are not applicable to the company since these provisions came into effect after the amendment in the SEBI (LODR) Regulations, 2015 and company had complied with the old provisions, which were applicable on the company at the prevailing time.

Advise the company the legal recourse available to it, quoting the relevant provisions of the law.

(4 marks)

(c) Under the Prevention of Money Laundering Act, 2002, the Adjudicating Authority assumes the powers of a civil court under the Code of Civil Procedure, 1908 while trying a suit relating to certain matters. Under what circumstances, the adjudicating authority can do so ?

(4 marks)

(d) Explain what offences are cognizable and non-bailable under the Prevention of Money Laundering Act, 2002.

(4 marks)

**OR (Alternate question to Q. No. 3)**

3A. (i) What do you mean by 'Adjudicating' under the Companies Act, 2013 ? What factors Adjudicating Officer shall consider while adjudging quantum of penalty ?

(ii) Explain the meaning of Mediation and Conciliation. What is the difference between these two terms ?

(iii) What do you mean by compounding of offences ? Which offences can be compounded under the Companies Act, 2013 and which cannot ?

(iv) What is the procedure for compounding of contraventions under Foreign Exchange Management Act, 1999 ?

(4 marks each)

4. (a) Explain the powers of Enforcement Directorate to compound the contraventions under the provisions of Foreign Exchange Management Act, 1999.

(4 marks)

(b) Discuss the General Liability Insurance Vs Professional Liability Insurance. What are the businesses and individuals benefitted by subscribing to a professional indemnity insurance policy ?

(4 marks)

: 7 :

- (c) Crisis management often requires decisions to be made within a short time frame, and often after an event has already taken place. In light of this statement, explain the meaning of Crisis Management and elaborate the (i) Crisis of Malevolence and (ii) Crisis of Organizational Misdeeds.  
(4 marks)
- (d) Section 2(29) of the Companies Act, 2013 defines and declares what “court” means. For different purposes, different courts are the relevant courts. Elaborate this statement.  
(4 marks)
5. (a) You are the Company Secretary of Nice Entertainment Ltd, a listed entity, engaged in the business of producing and trading of video games. The Board of directors have asked you to prepare and submit before the Board a note on Directors and Officers Liability Insurance (D and O Insurance). Prepare a brief note for perusal before the Board narrating the key features of the D and O Insurance Policy.  
(b) Explain the circumstances under which persons may be detained for period longer than three months without obtaining the opinion of Advisory Board as prescribed in the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.  
(8 marks each)
6. (a) Zuber, who is a joint venture partner in a company, had surreptitiously used information acquired in the course of pursuing the joint venture in order to acquire property adjacent to the joint venture site for his own use. The price paid for such deal by the Zuber was from the genuine and disclosed sources of income.  
Whether Zuber can be held liable for acquiring such property adjacent to the company ? Explain with the help of decided case law.  
(4 marks)

- (b) One of the plant site location of PS Steel Ltd., is lying idle for some time and the company have no plan to use that site. Earlier on this site, the company was planning to set up a mini steel plant, but due to its non-connectivity with the rail/road, the economic viability was not feasible, and it was decided by the Board of directors to dispose of such land. However, the sale of land requires the approval of the shareholders.

The Board of director of the PS Steel Ltd., authorized S. Kumar, the Real Estate Agent, to sale the land, knowing the fact that it requires the approval of the shareholders. The land was sold by S. Kumar much below the market price of the land prevailing in that area. The amount was deposited in the company's bank account which was subsequently withdrawn by the directors through cheques.

Whether the act of directors are justified ? Comment on the basis of decided case law.

(4 marks)

- (c) Explain the role and functions of Public Prosecutors and the Company Prosecutors.

(4 marks)

- (d) Explain the Summons Case and Warrant Case. Whether court have power to convert Summons Case into Warrant Case and vice-versa ?

(4 marks)

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