

MOCK TEST PAPER
FINAL (NEW): GROUP: I
PAPER 4: CORPORATE AND ECONOMIC LAWS

Question no. 1 is compulsory.

*Attempt any **four** questions out of the remaining **Five** questions*

Maximum Marks-100 Marks

Time Allowed: 3 Hours

QUESTIONS

1. (a) Mr. Ram have been appointed as a director in X Ltd. due to his holding of an office as Managing Director (MD) in its holding company, ABC Limited. In due course of time, Mr. Ram was offered by HXL Limited to join the company as a managerial personnel on very good package. He was offered the said position on the term that he has to resign from the ABC Ltd. Mr. Ram served a notice in writing to the company by mail and through post to his registered office on 1.02.2018. His notice of resignation specified the date 15.02 2018 as the last date in the ABC Ltd. However, due to pressure of HXL Ltd., he joined the company on 13.02.2018.
- Analyse, Integrate and apply in terms of the Companies Act, 2013, the legal position of Mr. Ram in the given situations-
- (i) Holding of directorship of Mr. Ram in X Ltd. after ceasing to hold office as MD in ABC Ltd.
- (ii) Joining of HXL Ltd on 13. 02.2018. **(8 Marks)**
- (b) Ms. Ashmita D'Souza recently graduated from National Law School, Bangalore and made her parents proud. While working on one of her assignments, she got really interested in knowing about the securities and gained expertise in the day-to-day working of financial markets. Meanwhile, her father got a wonderful opportunity at work to move to Germany and the whole family is very excited to make the move and settle there. Ashmita, along with her family applied for residence there and also gained the citizenship of Germany. She got married to a German, named Vincent, and they both came to India to start a career. After working with Ashmita on a couple of assignments, Vincent got interested to become a member of the Chennai Stock Exchange. Discuss, whether Vincent or Ashmita can become a member of the stock exchange, stating the provisions of Securities Contract Regulations in India. **(6 Marks)**
- (c) (i) Raghu, a clerical staff in the Power Board, was assigned with the task of inspection of the file with the requisite documents of the applicants who have applied for the new connections. Mr. Rajiv Shah, for his new flat, applied for the power connection as per the required usage with all the supportive documents. Raghu, conveyed Mr. Rajiv Shah, that his file has been rejected due to discrepancies in the compliances. Indirectly he communicated that, if required, he may clear his file and put into process. Mr. Rajiv Shah give him cash amount of ₹ 2 lacs to clear his file. State in the light of the above situation, the liability of Raghu and Mr. Rajiv Shah in the commission of an offence as per the Prevention of Money Laundering Act, 2002. **(4 Marks)**
- (ii) The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company, seeks your advice about the remedy available under the Prevention of Money Laundering Act, 2002. **(2 Marks)**
2. (a) Mr. Atul is an employee of the company ABC Limited and an investigation is going on him under the provisions of Companies Act, 2013. The company wants to terminate Mr. Atul on the ground of investigation going against him. They have filed the application to tribunal for approval of

termination. Company has not received any reply from the tribunal within 30 days of filling an application. The company consider it as a deemed approval and terminated Mr. Atul.

- Is the contention of company being valid in law?
- What remedy is available to Mr. Atul, where no reply is received from the Tribunal within 30 days of application?
- What remedy to Mr. Atul, if reply of Tribunal has been received within 30 days of application?

(7 Marks)

- (b) The members of company with no paid up share capital, filed a complaint against change in the management of the company due to which it was likely that the affairs of the company will be conducted in a manner that it will be prejudicial to the interest of its 25 members. Total number of members of company were 100. On inquiry and investigation on the complaint, having a reasonable ground to believe that the transfer or disposal of assets of the company may be against to the interests of its shareholders. The Tribunal passed an order that such transfer or disposal of assets shall not be made during one year of such order.

Evaluate on the basis of the given facts, the following situations according to the Companies Act, 2013:

- (i) Eligibility of the members to file a complaint.
- (ii) Where if the management dispose of the certain assets in contravention to the order of the Tribunal

(5 Marks)

- (c) Excel Ltd. committed an offence under the Companies Act, 2013. The offences falls within the jurisdiction of a special court of Bundi district in which the registered office of Excel Ltd was situated. However, in that Bundi district, there were two special courts one in X place and other in Y place. Identify the jurisdiction of the special court for trial of an offences committed by Excel Ltd.

(2 Marks)

- (d) Examine the given situations in the light of the legal provisions covered in the relevant Acts:

- (i) Mr. Indian received foreign contribution of amount 1.10 lakh from his relative residing abroad. Examine whether foreign remittances received by Mr. Indian to be treated as foreign contribution as per the FCRA, 2010.
- (ii) Ms. Rajkumari launch her boutique. She contacted with M/s Shyamlal merchants for supply of dress materials. The communication between the parties were over email. There was a term of service between the parties containing that "any disputes regarding quality or delivery shall be submitted to arbitration conducted under the guidance of Indian Clothes Manufacturers Association. Please place your order if the above terms and conditions are agreeable to you." Ms. Rajkumari placed an order. Comment on the validity of the such arbitration agreement according to the Arbitration and Conciliation Act, 1996.

(6 Marks)

3. (a) Long Lasting Ltd. applied to the Tribunal for the approval of proposed merger scheme. State the process to be complied with for the approval of the proposed merger scheme drawn by the directors of the Long Lasting Ltd. under the Companies Act, 2013.

(3 Marks)

- (b) Eminence Ltd. after passing special resolution filed an application to the registrar for removal of the name of company from the register of companies. On the complaint of certain members, Registrar came to know that already an application is pending before the Tribunal for the sanctioning of a compromise or arrangement proposal. The application was filed by the Eminence Ltd. two months before the filing of this application to the Registrar.

Determine the given situations in the lights of the given facts as per the Companies Act, 2013:

- (i) Legality of filing an application by Eminence Ltd. before the registrar.
 - (ii) Consequences if Eminence Ltd. files an application in the above given situation.
 - (iii) In case registrar notifies eminence Ltd as dissolved under section 248 in compliances to the required provisions, what remedy will be available to the aggrieved party? **(8 Marks)**
- (c) PQR Ltd., is a listed entity with its subsidiary, Twig Ltd. State the Corporate Governance requirements with respect to the subsidiary of Listed Entity as per the SEBI (LODR) Regulations, 2015. **(3 Marks)**
- (d) XYZ Finance Ltd. is a NBFC company with total assets of 550 crore, and an NPA of 50 crore in its balance sheet. The 50 crore loan consists of 9 cases of 5 crore each and 10 cases of 50 lakhs each. The management of the company wants to sell bad loans worth 50 crore to an ARC. Of the ₹ 50 crore, 45 crore is secured against various properties, while one case of 5 crore is unsecured.

During detailed discussion with the legal counsel, it came to light that 2 crore of the secured bad loan has not been registered with the central registry CERSAI, however this was not informed to the buyer in the preliminary discussion. Analyse and advise the CEO of XYZ Finance Ltd. how much bad loan can he sell to the ARC under the SARFAESI, Act, 2002? **(6 Marks)**

4. (a) One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors whereby power was conferred upon them to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members') decisions.

Examining the provisions of the Companies Act, 2013, answer the following:

Whether the contention of members against the non-compliance of members' decision by the directors is tenable?

Whether it is possible for the members usurp the powers which by the Articles are vested in the directors by passing a resolution in the general meeting? **(8 Marks)**

- (b) Mr. Moral, a member of SEBI was engaged in conducting of inquiries and Audit of various stock exchanges. A group of complainants suspected that Mr. Moral, have taken bribe in the conduct of inquiries and Audit of stock exchanges. Therefore, he should be removed from his office. Examine with reference to the SEBI Act the rationality of the complainants on removal of Mr. Moral as per the SEBI Act, 1992. **(6 Marks)**
- (c) Mr. Xing Yang a citizen of Nepal, has a ancestral residential property in India. He transferred the said property to one of his known relative residing in India on lease for 10 Years. State in the given situation the legal position on the transfer of the said property by Mr. Xing Yang. **(3 Marks)**
- (d) State the manner of initiation of corporate insolvency resolution process by financial creditor under the Insolvency and Bankruptcy Code, 2016. **(3 Marks)**
5. (a) Mr. fortune is holding directorship in the following types of companies:
- (i) 4 Public companies
 - (ii) 10 private companies
 - (iii) 2 companies registered under section 8 of the Companies Act, 2013.

Mr. Fortune further received offer from 7 public companies, 6 private companies and 2 companies registered under section 8 of the Companies Act, 2013. He wants to take up maximum permissible directorship.

His order of preference is as follows:

- (1) Public companies
- (2) Private companies (not being holding or subsidiary of any public company) and
- (3) Companies registered under section 8 of the Companies Act, 2013

Decide the number of companies in which Mr. Fortune can hold the directorship. **(8 Marks)**

- (b) Skyline Ltd. was ordered to be wound up compulsory on a petition filed on 10th February, 2018 before Tribunal. The official liquidator who has taken control for the assets and other records of the company has noticed that the Managing Director of the company has transferred certain properties belonging to the company to one of its creditor "Vansh (Pvt.) Ltd", in which his son was interested. This was causing huge monetary loss to the company. The sale took place on 15th September, 2017.
- (i) Examine what action the official liquidator can take in this matter having regard to the provisions of the Companies Act, 2013.
 - (ii) Determine the rights and liabilities of fraudulently preferred persons by mortgage of charge of property to him to secure the company's debt. **(6 Marks)**
- (c) X Ltd. was intending to initiate voluntarily liquidation proceedings. A declaration was made on affidavit of the some of the directors of the X Ltd. verifying full inquiry of the affairs of the company. They gave the opinion that the company will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation.

Analysing the given situation, comment whether X Ltd can initiate voluntary liquidation proceeding in compliance with the conditions given in the Insolvency and Bankruptcy Code, 2016. What are the required documents to be accompanied with the declaration?

Also, state the consequences, where if the articles fixed the period of duration for which company may be carried and that period expires. **(6 Marks)**

6. (a) XYZ Limited is an unlisted public company having a paid-up capital of twenty crore rupees as on 31st March, 2017 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2017. The total number of directors is thirteen.

State the following answers:

- (i) Minimum number of directors appointed as Independent Director in XYZ Limited.
 - (ii) What will be the consequences where XYZ Ltd. ceases to fulfill any of the required conditions with respect to appointment of Independent directors for three continuous years?
 - (iii) If suppose XYZ Ltd. (Unlisted public company) is a dormant company, what shall be the law related to the appointment of Independent director? **(4 Marks)**
- (b) X, a foreign company, with a place of business in India, ceases to carry on business in India. **State** the legal position of such foreign company under the Companies Act, 2013. **(2 Marks)**
- (c) (i) NCLAT was constituted by the Central Government consisting of a chairperson along with the Judicial and Technical members for hearing appeals against the orders of the Tribunal. Later it was discovered that chairperson is a judge of a high court. Aggrieved parties to a case, challenged the sanctity of the order of the respective case and said that it is invalid. Examine in the light of the given situations the validity of the act or proceedings conducted by the NCLAT.

- (ii) Mr. A is a judicial magistrate in a lower court. He was appointed to hold the office of the special court for the speedy disposal of the pending cases under the Act. Decide in the light of the Companies Act, 2013, whether the appointment of Mr. A is tenable. **(8 Marks)**
- (d) Explain the meaning of "Capital Account Transactions" under the Foreign Exchange Management Act, 1999. Examine whether an Investment by person resident in India in Foreign Securities is permissible or not under the above Act as Capital Account transactions. **(3 Marks)**
- (e) Raman garments manufacturer entered into an arbitration agreement with its regular customers on the supply of dress material on demand in advance. At the same time, also hold the term that in case of disputes they may refer to the arbitration for the settlement of the matter. Raman garments manufacturer fail to make delivery of supply of dress material to Mr. X, a regular customer. MR. X already made Raman garments manufacturer aware of this important order in advance. Since Raman garments manufacturer was not able to meet the said the order well in time, he took the plea of theft and setting of fire to the property in the manufacturing unit.
- The said matter was referred to the arbitration. State the validity as to the submission of the said dispute to the arbitration in the light of the Arbitration and Conciliation Act, 1996. **(3 Marks)**