

Roll No.

Total No. of Printed Pages – 12

Total No. of Questions – 6

Maximum Marks – 70

GENERAL INSTRUCTIONS TO CANDIDATES

1. The question paper comprises two parts, Part I and Part II.
2. Part I comprises Multiple Choice Questions (MCQs).
3. Part II comprises questions which require descriptive type answers.
4. Ensure that you receive the question paper relating to both the parts. If you have not received both, bring it to the notice of the invigilator.
5. Answers to Questions in Part I are to be marked on the OMR answer sheet only. Answers to questions in Part II are to be written on the descriptive type answer book. Answers to MCQs, if written in the descriptive type answer book, will not be evaluated.
6. OMR answer sheet will be in English only for all candidates, including for Hindi medium candidates.
7. The bar coded sticker provided in the attendance register, is to be affixed only on the descriptive type answer book. No bar code sticker is to be affixed on the OMR answer sheet.
8. You will be allowed to leave the examination hall only after the conclusion of the exam. If you have completed the paper before time, remain in your seat till the conclusion of the exam.
9. Duration of the examination is 3 hours. You will be required to submit (a) Part I of the question paper containing MCQs, (b) OMR answer sheet thereon and (c) the answer book in respect of descriptive type answer book to the invigilator before leaving the exam hall, after the conclusion of the exam.
10. The invigilator will give you acknowledgement on Page 2 of the admit card, upon receipt of the above-mentioned items.
11. Candidate found copying or receiving or giving any help or defying instructions of the invigilators will be expelled from the examination and will also be liable for further punitive action.

PART – II

70 marks

1. Question paper comprises 6 questions. Answer Question No. 1 which is compulsory and any 4 out of the remaining 5 questions.
2. Working notes should form part of the answer.
3. Answers to the questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate has not opted for Hindi Medium, his/her answers in Hindi will not be evaluated.

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PART – II

1. (a) The Board of Directors of KM Limited has approved annual financial statements for the financial year 2019-20 showing net profit of ₹ 50 crore. The Board of Directors proposed dividend @ 10% to the equity shareholders without transfer of any amount to reserves of the company for the financial year 2019-20 in the board meeting held on 31-07-2020 and was approved by the shareholders in the annual general meeting held on 30-09-2020.

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It is observed from the annual financial statements referred above that the company failed to comply with the provisions of section 73 of the Companies Act, 2013 and the failure continued for 3 months. The above failure was finally complied on 31-12-2019 by the company.

KA Limited, an associate company of KM Limited is registered under section 8 of the Companies Act, 2013. The Board of Directors of KA Limited proposed dividend @ 9% to its equity shareholders for the financial year 2019-20 in the board meeting held on 30-06-2020 and was approved by the shareholders in the annual general meeting held on 31-07-2020.

Answer the following explaining the provisions of the Companies Act, 2013 :

- A. Can KM Limited declare dividend without transfer of any amount to reserves ?
- B. Does the failure to comply with the provisions of section 73 of the Companies Act, 2013 have any impact on the declaration of dividend by the shareholders of KM Limited in the given situation ?
- C. Can KA Limited declare dividend to its equity shareholders @ 9% mentioned above ?

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- (b) Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013 : 4

- (i) Mr. RM is a practising Chartered Accountant and Mr. ST, who is a relative of Mr. RM is holding securities of ABC Limited having face value of ₹ 80,000 (market value ₹ 1,20,000). Directors of ABC Limited want to appoint Mr. RM as an auditor of the company.
- (ii) Mr. RS is a practising Chartered Accountant indebted to XYZ Limited for ₹ 7 lakh. Directors of XYZ Limited want to appoint Mr. RS as an auditor of the company.

- (c) Kalpana Powergen Private Limited invited the applications for appointment of Chief Financial Officer (CFO) and Internal Auditor for the Company. Mr. Mahesh Mitra with educational qualification of M.Com. and LL.B. from a reputed university and having practical experience as a practicing lawyer for five years was appointed 'CFO' and 'Internal Auditor' by the Managing Director of the Company. The following balances have been extracted from the audited financial statement of the Company for the year ended 31st March, 2020. 5

Paid-up Share Capital ₹ 100 crore

Turnover ₹ 200 crore

Outstanding Loan from banks ₹ 10 crore

You are required to examine under the provisions of the Companies Act, 2013 as to (i) whether it was mandatory for Kalpana Powergen Private Limited to appoint CFO and Internal Auditor and (ii) whether the appointment of Mr. Mahesh Mitra as a 'CFO' and an 'Internal Auditor' at the same time shall be deemed to be valid considering his educational and professional qualification.

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2. (a) Kids Toys Limited, a company incorporated in Japan, has established its branch office in Mumbai for business to be conducted in India. The structure of paid-up share capital of Kids Toys Limited as at 31.03.2020 is as below :

Preference share capital held by Jiyalal, an Indian citizen : 10%

Equity share capital held by Ramlal, an Indian citizen : 20%

Equity share capital held by Smart Toys Limited,
Indian National company : 20%

You are being a Chartered Accountant is requested to explain with reference to the provisions of the Companies Act, 2013 whether Kids Toys Limited shall be deemed to be a Foreign Company or an Indian Company for the business carried on by it in India and for such business will it be required to comply with the relevant provisions of the Companies Act, 2013 as if it is an Indian Company.

- (b) David is a Managing Director of Dynamic Power Limited, a listed public company. His wife consolidated her shareholding of Dynamic Power Limited within a very short span of time. David shared with her the information of unpublished adverse financial results of Quarter-4. Taking a call of this information she sold her shares in the market at a handsome price. The market prices of Dynamic Power Limited steeply fell after Q-4 results were published. Some investors made a complaint to SEBI alleging that David and Dynamic Power Limited are indulged in insider trading and manipulating the market prices with a request to issue cease and desist order for protection of investors' interest. Explain under the provisions of the Securities and Exchange Board of India Act, 1992, (the SEBI Act) the powers that can be exercised by SEBI to pass cease and desist order.

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- (c) ABC Limited is a Startup recognised by the Central Government. The company is intending to raise External Commercial Borrowing under automatic route of US\$ 5 million for 2 years in the form of partially convertible preference shares.

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You are required to advise the company on the Maturity, Forms and Amount of External Commercial Borrowing permitted as per guidelines contained in the master circular issued by Reserve Bank of India.

- (d) Prudential Life Insurance Limited incorporated on 01.04.2019 could not commence its business till 01.04.2020. The Company filed an application to the Registrar of Companies with a special resolution to remove its name from the register of the Companies maintained by the Registrar and give effect to the dissolution of the Company. Rejecting the application on the ground that the application has not been supported by approval of the regulatory authority the Registrar asked the Company to re-submit it after making necessary compliances. Examine the validity of rejection of the application of Prudential Life Insurance Limited by explaining the procedure to be followed for removal of the name of the Company and get it dissolved under the provisions of the Companies Act, 2013 (the Act) without taking a recourse to the regular winding-up procedure provided under chapter XX of the Act.

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3. (a) ABC Bank acquired a building from one of the customer on default of loan financed by it on 01-01-2014. The said building cannot be used by the bank due to location non suitability. The bank is trying to dispose of the building but the price intended is not being offered. The management of the bank decided to wait for some more time for selling the building.

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Explain the provisions in this regard under the Banking Regulation Act, 1949 and advise bank whether it can hold it ?

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(b) The Reporting Authority failed to provide additional information called for by the Director under section 12A. Consequently, after inquiry, he imposed penalty on the Reporting Authority under section 13. Examine, under the provisions of the Prevention of Money Laundering Act, 2002, the maximum monetary penalty the Director can impose for contravention of section 12A and state, what is the remedy available to the Reporting Authority aggrieved by the order of the Director. **3**

(c) Anil, Sunil and Swapnil hold 33%, 33% and 34% of equity shares of SAS Private Limited respectively. Sunil and Swapnil are directors and Swapnil is looking after the whole of the management and administration of the company without being formally appointed as a Managing Director. Since last three years the company is incurring heavy losses and could not declare a dividend. Being aggrieved, Anil filed a complaint before the Tribunal on the grounds of oppression and mismanagement of the Company such as running of a company continuously in losses, non-declaration of dividend and managing the affairs of the company by a director who has not been formally appointed as a managing director. The complaint is thereby made soliciting the direction for payment of compensation by way of salary to him as like other directors and such other direction as may be deemed suitable by the Tribunal to remove oppression and mismanagement of the Company. Examine the maintainability of his complaint in law in the light of the provisions of the Companies Act, 2013. **4**

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- (d). The National Company Law Tribunal (the Tribunal) issued an order for winding up of M/S Tours & Travels Company Limited appointing Mrs. Y, a practicing Company Secretary as Company Liquidator selecting her from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016. While the winding up proceedings were in progress the Mrs. Y was removed from the membership of the Institute of Company Secretaries of India being found to be guilty on the grounds of professional misconduct. Consequently, the Tribunal removed her from the office of Company Liquidator. Explain the grounds on the basis of which the Tribunal may remove the Company Liquidator examine the validity of the order of the Tribunal removing Mrs. Y from the office of Company Liquidator of M/S Tours & Travels Company Limited under the provisions of the Companies Act, 2013. 4

4. (a) The Government of India is planning to do massive banking reforms through the merger of some of the nationalized banks into other nationalized banks to pool their synergy and make them a competitive and vibrant device in economic development of the nation. It is likely that the asset value or turnover of the acquirer nationalized bank and the targeted bank will cross the threshold prescribed under the Competition Act, 2002. Examine, explaining the relevant provisions of the said Act whether such merger shall constitute 'combination' and shall it be deemed to be void. 3

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- (b) What do you understand by 'Document'? Explain its elements. **3**
- (c) Oil & Gas Energy Limited (Corporate Debtor) borrowed a loan of ₹ 100 crore for its expansion project from State Bank of India (SBI), Bank of India (BOI) and Punjab National Bank (PNB) under the consortium arrangement in the proportion of 50%, 30% and 20% respectively. The corporate insolvency process has begun by order of the Tribunal on an application made by the Financial Creditor. The Interim Insolvency Resolution Professional (IIRP) constituted a Committee of Creditors (CoC) which noted that total financial debt owed by the Corporate Debtor is ₹ 500 crore in aggregate. You are requested to state which of the members of the consortium shall be the member of CoC and what shall be their voting share in the CoC as per the provisions of the Insolvency and Bankruptcy Code, 2016. **4**
- (d) XYZ Limited, an unlisted company with total assets of ₹ 90 Lakh as per financial statement as on 31st March, 2019, defaulted in the payment of the financial debt against the financial creditor Mr. A. Mr. A filed an application for initiation of insolvency process against XYZ Limited under the fast track corporate insolvency resolution process by 31st May, 2020. Discuss the relevancy for disposal through the mechanism of the fast track corporate insolvency resolution process and the legal position of holding of fast track corporate insolvency resolution process by Mr. A in terms of the IBC, 2016. Compute the time period for completion of the fast track process in the said situation. **4**

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5. (a) PQR Limited has purchased machinery from the vendor under hire purchase agreement. Subsequently, before payment of last installment due on 01.08.2020 the Company went into liquidation in the month of July 2020 under the order of the Tribunal. Due to liquidity problem PQR Limited defaulted the payment of the last installment due under hire purchase agreement for the machinery and consequently the Vendor seized the machinery from the custody of PQR Limited on the next day of the default and sold it to the new buyer without leave of the Tribunal. Examine the effect of the transaction of seizing and transferring the machinery by the vendor to the new buyer in the light of the provisions of section 334 and 335 of the Companies Act, 2013 dealing with the winding up of the Company. 3
- (b) Mr. Robert, aged 64 years as on 31.01.2016, was appointed 'Presiding Officer' of Securities Appellate Tribunal (SAT) on 01.02.2016 for a term of 5 years. He served to the Central Government the notice of resignation from the office of 'Presiding Officer' on 01.10.2020. The Central Government issued an order appointing his successor which shall take effect on 01.12.2020. Explaining the provisions of the Securities and Exchange Board of India Act, 1992, (the SEBI Act) determine the date on which Mr. Robert shall vacate his office. 3
- (c) On suspicion of manipulation of accounts of RRP Private Limited for the year 2019-20 to ease bank finance, the Registrar seized the books of accounts and other papers and retained it for 180 days and thereafter extended the retention for next 180 days for further scrutiny. Advise the Company whether it shall be lawful for the Registrar to seize the books for more than 180 days ? What is the remedy available to the Registrar to make further scrutiny after the expiry of 180 days of retention of books if so required by him? Your advice should be given in consultation with the provisions of the Companies Act, 2013. 2

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- (d) Examine the following situation in the light of the provisions of the Companies Act, 2013 : 2

Total number of secured creditors are 10 and the aggregate amount of outstanding loan is ₹ 10.00 crore as at 31.03.2020 as per audited financial statement. Out of them, 4 creditors together, holding a debt of ₹ 9.00 crore against the company agree and confirm, by way of affidavit, to the scheme of compromise or arrangement. Having taken on record this affidavit the NCLT issued the order approving the scheme without calling the meeting of the creditors. The rest of the creditors want to oppose the order of the NCLT as it has been issued without calling the meeting of the creditors. Examine the validity of the order of NCLT.

- (e) While discussing on the agenda item for appointment of Soham as an Additional Director at the Board meeting one of the directors made irrelevant and defamatory remarks against Soham. The Chairman, while approving the draft minutes, deleted such remarks from the minutes. At the subsequent board meeting while confirming the minutes of the preceding meeting, the director making such remarks objected to exclusion of his remarks from the minutes not being valid on the part of the Chairman and thereby the Company has contravened the requirement of the Companies Act, 2013 to maintain speaking minutes of Board meeting. You, being a Chartered Accountant offer your opinion in the light of the provisions of the Companies Act, 2013 whether the Chairman has any right to exclude any matter from the minutes and whether non maintenance of speaking minutes of board meeting shall result in contravention of any provisions of the Companies Act, 2013 ? 4

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6. (a) The Board meeting of A Ltd. was held on 15.03.2020. The next board meeting could not be held during the quarter ending 30.06.2020 amid covid-19 pandemic and it was held on 01.09.2020 for approval of financial statement for the year ending 31.03.2020. Examine whether A Ltd. has contravened any provisions of the Companies Act, 2013 in this case as regards to the frequency of the board meetings. 3
- (b) ABC Limited aggrieved by the order of Appellate Tribunal on the question of inadmissibility of the evidences placed before it and ignoring the doctrine of *res judicata* on certain matter intends to file an appeal before the Supreme Court. The order of Appellate Tribunal dated 15.12.2019 was delivered to ABC Limited on 01.01.2020. Examine under the provisions of the Companies Act, 2013 whether ABC Limited is entitled to prefer an appeal and if yes what is the time limit to file an appeal before the Supreme Court against the order of the Appellate Tribunal. 3
- (c) Examine the following situation in the light of the provisions of the Companies Act, 2013 : 2
- Total number of secured creditors are 10 and the aggregate amount of outstanding loan is ₹ 10.00 crore as at 31.03.2020 as per audited financial statement. NCLT sanctioned the scheme as approved by the meeting of the creditors by requisite majority. 4 creditors having a debt of ₹ 50.00 Lakh together intend to object to the scheme. Are they entitled for the same ?

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- (d) Mr. Janak, a person resident outside India i.e. USA has invested in five residential immovable properties under construction in Mumbai. 3

Each property was negotiated at ₹ 1.50 crore with the companies owned by builders. This amount was to be paid in two instalments i.e. 50% on immediate basis on booking and the balance on possession of properties. The above transaction was done by the companies owned by builders through two brokers from USA on commission basis.

ABC as per term and conditions remitted 50% of the amount of all six immovable properties directly to the Builders.

Answer the following explaining the provisions of the Foreign Exchange Management Act, 1999 :

- A. Whether investment by Mr. Janak and payment of commission on this transaction is permissible ?
- B. How much maximum amount of commission can be paid to each broker ?

- (e) Explain how to distinguish the term 'mandatory' and 'directory' while interpreting the provision. Section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus.....". State whether this provision is mandatory or directory. 3

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