MOCK TEST PAPER 1

FINAL (OLD) COURSE: GROUP – I

PAPER – 4: CORPORATE AND ALLIED LAWS

SUGGESTED ANSWER

Division A: Multiple Choice Questions (30 Marks)

1. (c)
2. (c)
3. (d)
4. (b)
5. (b)
6. (d)
7. (b)
8. (b)
9. (a)
10. (d)
11. (b)
12. (d)
13. (b)
14. (b)
15. (c)
16. (a)
17. (d)
18. (a)

Descriptive Answer

1. (A) (I) Section 185(3) of the Companies Act, 2013 provides that nothing in sub-section (1) and (2) shall apply to the giving of any loan to a managing director or whole-time director-

(i) As a part of the conditions of service extended by the company to all its employees; or

(ii) Pursuant to any scheme approved by the members by a special resolution

In the given case, at the time of appointment of Anwesha, as Managing Director, providing of loan was not part of the conditions of service. Further, the company is also not having policy of providing loan to its employee. Hence, Anwesha cannot be granted loan.

(II) Section 185(1) of the Companies Act, 2013 provides that no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—

a. any director of company, or of a company which is its holding company or any partner or relative of any such director; or

b. any firm in which any such director or relative is a partner.

In the given case, the 6 months advance salary is also part of the loans / advance (indirectly), hence, in terms of Section 185(1)(a), it can't be given.

(III) The answer would have been the same. Since section 185(1) starts with the words, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—

(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or (b) any firm in which any such director or relative is a partner.

Therefore, whether it be a public company of private company or even One Person Company, the provisions of section 185(1) do not permit to grant loans and advances to any director.

However, section 185(3) provides that sub-section (1) shall not apply, if providing of loans / advances was part of the service conditions of the appointment of the manging director.

(IV) Yes, in that case Anwesha could have availed the loan up to ₹ 50 lakhs in terms of section 185(3) of the Companies Act, 2013.

Section 185 (3)(a)(i) provides that, nothing contained in sub-sections (1) and (2) shall apply to the giving of any loan to a managing or whole-time director as a part of the conditions of service extended by the company to all its employees.

(B) (i) Section 197(1) provides that the total managerial remuneration payable by a public company, **to its directors**, including managing director and whole-time director, and its manager in respect of any financial year **shall not exceed eleven per cent. of the net profits of that** company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that the company in general meeting may, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting, by a special resolution,—

(i) the remuneration payable to any **one** managing director**;** or whole-time director or manager **shall not exceed five per cent. of the net profits** of the company and if **there is more than one** such director remuneration shall **not exceed ten per cent. of the net profits** to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) **one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;** (B) three per cent. of the net profits in any other case.

For the FY ended on 31.03.2020	
Remuneration to all the directors in terms of section 197(1): 11% of the Net Profit of ₹ 50 cores	5.50
Remuneration to MD in terms of second proviso i.e. 5% of ₹ 50 crores	2.50
Remuneration to WTD in terms of second proviso i.e. 5% of ₹ 50 crores	2.50
Remuneration to other directors in terms of second proviso i.e. 1% of ₹ 50 crores	0.50

(ii) The first proviso to section 197(1) provides that the company **in general meeting may, authorise the payment of remuneration exceeding eleven per cent**. of the net profits of the company, subject to the provisions of **Schedule V.**

2. (A) (i) A Chartered Accountant is not authorised to do valuation until he is a registered as a valuers in accordance with the section 247.

Section 236(2) provides that the acquirer, person or group of persons under sub-section (1) shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of **valuation by a registered valuer** in accordance with such rules as may be prescribed.

Who can be a registered valuer

Rule 3 of the Companies (Registered Valuers and Valuation) Rules, 2017 provides that eligibility, qualifications and registration of valuers.

Rule 3(1) provides that –

A person shall be eligible to be a registered valuer if he-

(a) Is a valuer member of a registered valuers organisation;

(b) Is recommended by the registered valuer's organisation of which he is a valuer member for registration as a valuer;

(c) Has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;

(d) Possesses the qualifications and experience as specified in rule 4;

(e) Is not a minor;

(f) Has not been declared to be of unsound mind;

(g) Is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;

(h) Is a person resident in India;

(i) Has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence of five years has not elapsed from the date of expiry of the sentence:

(j) Has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have and

(k) Is a fit and proper person.

Since in the given case, the valuation has been done by a non-registered valuer, hence, the valuation done by the CA is not valid as per the provisions of the Companies Act, 2013. Since the valuation is not valid, the whole of the exercise / procedures as described in section 236 is of no value / legal sanctity under the Companies Act, 2013.

(ii) Section 247 of the Companies Act, 2013 and the Rules framed thereunder provides the detailed guidelines relating to the valuation to be done only by the registered valuer. A registered valuers is, who possess the requisite qualifications, passed the valuation examination and is registered by the IBBI to act as valuer.

Person already in the panel of Income tax Department is not eligible to carry out the valuation as per above specified requirement under the Companies Act, 2013.

(B) Provisions of the Competition Act, 2002 relating to Combination

As per Section 5 of the Competition Act, 2002 (the Act), the acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if any acquisition where the parties to the acquisition, being the acquirer and the enterprise whose control, shares, voting rights or assets have been acquired or being acquired jointly have, in India, the assets of the value of ₹2000 crore or turnover more than ₹ 6000 crore respectively (limits as enhanced by the Central Government vide Notification No. S.O.675 E dated march 4, 2016).

As per Section 6 of the Act, no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

However, Vide Notification S.O. 2828(E) dated 30th August, 2017, in exercise of the powers conferred by clause (a) of Section 54 of the Competition Act, 2002 , the Central Government in the public interest hereby exempts, all cases of reconstitution, transfer of the whole or any part thereof and amalgamation of nationalized banks, under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, from the application of provisions of Sections 5 and 6 of the Competition Act, 2002 for a period of ten years from the date of publication of this notification in the Official Gazette.

Hence, in the instant case, the merger of some of the nationalized banks into other nationalized banks shall not constitute 'combination' and it shall not be void.

3. (A) (i) In terms of Nidhi Rules, 2014 the following is the criteria for declaration of a company as Nidhi Company:

Rule 4: Incorporation and incidental matters

1. A Nidhi shall be a public company and shall have a minimum paid up equity share capital of five lakh rupees.
2. On and after the commencement of the Act, no Nidhi shall issue preference shares.
3. If preference shares had been issued by a Nidhi before the commencement of this Act, such preference shares shall be redeemed in accordance with the terms of issue of such shares.
4. Except as provided under the proviso to sub-rule (e) to rule 6, no Nidhi shall have any object in its Memorandum of Association other than the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.
5. Every "Nidhi" shall have the last words 'Nidhi Limited' as part of its name.

Rule 5: Requirements for Minimum Number of Members, Net Owned Fund etc.

1. Every Nidhi shall, within a period of one year from the date of its incorporation, ensure that it has-
   a. not less than two hundred members;
   b. Net Owned Funds of ten lakh rupees or more;
   c. Unencumbered term deposits of not less than ten per cent. of the outstanding deposits as specified in rule 14; and
   d. ratio of Net Owned Funds to deposits of not more than 1:20.
2. Within ninety days from the close of the first financial year after its incorporation and where applicable, the second financial year, Nidhi shall file a return of statutory

compliances in Form **NDH-1** along with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 with the Registrar duly certified by a company secretary in practice or a chartered accountant in practice or a cost accountant in practice.

3. If a Nidhi is not complying with clauses (a) or (d) of sub-rule (1) above, it shall within thirty days from the close of the first financial year, apply to the Regional Director in Form **NDH-2** along with fee specified in Companies (Registration Offices and Fees) Rules, 2014 for extension of time and the Regional Director may consider the application and pass orders within thirty days of receipt of the application. Provided that the Regional Director may extend the period upto one year from the date of receipt of application.

   Explanation.- For the purpose of this rule "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

4. If the failure to comply with sub-rule (1) of this rule extends beyond the second financial year, Nidhi shall not accept any further deposits from the commencement of the second financial year till it complies with the provisions contained in sub-rule (1) and gets itself declared under sub-section (1) of section 406, besides being liable for penal consequences as provided in the Act.

(ii) Rule 11 of the Nidhi Rules, 2014 deals with the acceptance of deposits by Nidhi's. Its sub-rule (1) provides that a Nidhi shall not accept deposits exceeding twenty times of its Net Owned Funds (NOF) as per its last audited financial statements.

The total NOF of the company is ₹ 20 lakhs only (15+5). The company can accept deposits from its members not exceeding 20 times of the NOF i.e., up to ₹ 400 lakh only.

(B) Power of RBI to remove director: Under section 36AA of the Banking Regulation Act, 1949, RBI can terminate any Chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when RBI is of the opinion that conduct of such persons is detrimental to the interest of the depositors or for securing proper management of the banking company. Before such termination concerned person should be given opportunity to be heard of. Such terminated officials can make appeal to the Central Govt. within 30 days from the date of communication of such termination order. The decision of the Central Government cannot be called into question. In case an order is issued pursuant to this section the concerned person shall cease to hold his office for a period of not exceeding 5 years as may be specified in the order. Contravention of the above provision shall be punishable with a fine, which may extent to ₹ 250 per day.

Any such order shall be valid for a period not exceeding three years or such further periods of not exceeding three years at a time as RBI may specify.

Under section 36AB: RBI is empowered to appoint additional Directors for the banking company with effect from the date to be specified in the order, in the interest of the bank or that of depositors. Such additional directors shall hold office for a period not exceeding three years or such further periods not exceeding three years at a time.

4. (A) As per the Section 32A(2) of the Insolvency and Bankruptcy Code, 2016, **n**o action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation:- For the purposes of this sub-section, it is hereby clarified that-

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

Here, it is given that, as a result of the resolution plan, there was change in the entire management of Ankush Ltd. and its control has been handed over to persons who have not been its related parties and against whom no legal proceedings are going on under any statue.

Also, both the properties had been covered under the resolution plan approved by the Adjudicating Authority.

It appears from the given facts that conditions as demonstrated in section 32A(2) has been satisfied by Ankush Ltd. and thus, no action can be taken against the property of Ankush Ltd. which was liable to be attached by the Enforcement Director (ED), prior to the commencement of the corporate insolvency resolution process, for an offence committed under the provisions of the Prevention of Money Laundering Act, 2002, by it.

However, the said immunity has been not provided to such a property which has been acquired by a person through corporate insolvency resolution process. So, the property which has been acquired by Lavan Ltd. can be seized under the provisions of the Foreign Contribution Regulation Act, 2010, as there is no bar in doing so, under the provisions of the Insolvency and Bankruptcy Code, 2016.

(B) (i) Validity of Contention made by Global Shipping Ltd.

As per Rule 4 read with the Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, for making remittance for membership of P & I Club, prior approval of Ministry of Finance (Insurance Division) is required to be taken.

No approval is required where any remittance has to be made for the transactions listed in Schedule II from an RFC account and EEFC account, respectively. However, if payment has to be made for remittance for membership of P & I, approval is required even if payment is from EEFC account.

Here, Global Shipping Ltd. was required to take approval of the Ministry of Finance (Insurance Division) for making the remittance through EEFC account and in case of RFC account only, no approval was required.

Thus, its contention is partially invalid.

(ii) Validity of Contention made by Siphonic Ltd.

As per Rule 5 read with the Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, for remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses, prior approval of the Reserve Bank of India shall be required.

Here, Siphonic Ltd. made remittance of $ 1,10,000 equivalent to ₹ 82.5 lakhs (1 USD = ₹ 75) to BMT Inc., a US company, as reimbursement of pre-incorporation expenses for bringing investment of ₹ 18 crore into India.

So, the amount remitted comes to approximately 4.58% (₹ 82.5 lakhs / ₹ 1800 lakhs) of the investment made into India which is lesser than the prescribed limit of 5%. However, as it exceeds $ 1,00,000 and so approval was required irrespective of whether the amount remitted exceeds 5% of the investment or not.

Thus, the contention of Siphonic Ltd. is invalid.

5. (A) (i) Section 275(6) provides that on appointment as provisional liquidator or Company Liquidator, as the case may be, **such liquidator shall file a declaration within seven days from the date of appointment** in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.

Thus, the disclosure of interest / independence has to be filed by the provisional liquidator within 7 days from the date of appointment. The order given by the Tribunal may provide the date of appointment. If no such date has been mentioned in the order by the Tribunal, the date of the order may be treated as date of appointment.

(ii) Section 275(6) provides that on appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, **with the Tribunal** and such obligation shall continue throughout the term of his appointment.

Thus, the disclosure of interest / independence has to be filed by the Provisional Liquidator with the Tribunal.

(iii) Section 276(1) provides that the Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on ground, of conflict of interest or lack of independence during the term of his appointment that would justify removal.

Thus the liquidator has to be independent and should not have the conflict of interest. In the given case Raman's wife is already holding the post of Whole Time Director in the company, which can vitiate the independence of the liquidator. Further Raman, has deliberately not filed such declaration before the Tribunal. Hence the Tribunal after having such information, can remove him.

(B) (i) In order to find the answer of this question, we may have to refer the definition of the money laundering as given in the PML Act.

Section 3 deals with the offence of money-laundering. It provides that-

Whosoever **directly or indirectly attempts** to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the **proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming** it as untainted property shall be guilty of offence of money-laundering.

Explanation.—For the removal of doubts, it is hereby clarified that,—

(a) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(i) concealment; or

(ii) possession; or

(iii) acquisition; or

(iv) use; or

(v) projecting as untainted property; or

(vi) claiming as untainted property, in any manner whatsoever;

(b) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

Further Paragraph 2 of Part A of the Schedule of the PML Act lists out the offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 [Section 17 Contravention in relation to prepared opium]

Here, in the given case, Sabina was involved in the process or activity connected with the **proceeds of crime (i.e. trading of opium)** which comes within the ambit of money laundering.

(ii) Yes, the definition of the money laundering as given in section 3 of the PML Act provides that whosoever **directly or indirectly attempts** to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the **proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming** it as untainted property shall be guilty of offence of money-laundering.

When Kishori Lal came to know that Sabina is engaged in the trading of opium, he should have secretly inform to the Police / Narcotics Dept. But instead of informing to the law enforcing agencies, he received a hand some amount from Sabina for keeping silence over the matter. Thus, he was indirectly assisting in the happening of the crime, hence he is also an accused person.

6. (A) (I) According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

In the present case, the Board of Directors of GEN X Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

(i) Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

(ii) The Board of Directors of GEN X Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

Consequences: The following are the consequences for violation of the above provisions:

(a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupees one thousand for every day during which such default continues.

(b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

(II) As per the provisions of Section 141(3)(d) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall not be appointed as an auditor of the Company.

However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding ₹ 1,00,000 [as prescribed under the *Company (Audit and Auditors) Rules, 2014].*

In the given instance, CA. Sana is not disqualified to be appointed as a statutory auditor in Hot Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ₹ 95,000 in the said company, which is within the prescribed limit.

(B) As per the Section 3 of the Prevention of Money Laundering Act -

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

The process or activity connected with **proceeds of crime** is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

Section 2(1)(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a **scheduled offence** or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Section 2(1)(y) of the PML Act provides that –

"scheduled offence" means— (i) the offences specified under Part A of the Schedule;

Under Schedule -Part A - Paragraph 8: Offences under the Prevention of Corruption Act, 1988 specifies Section 7- Offence relating to public servant being bribed.

In the light of the above mentioned sections, it is a case of money laundering i.e. converting of black income earned through bribe and efforts in converting it into white money and raising the house loan in the name of wife.

(C) **Effect of usage:** Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

(i) *'Optima Legum interpres est consuetude'* (the custom is the best interpreter of the law); and

(ii) *'Contemporanea exposito est optima et fortissinia in lege'* (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as *contemporanea expositio* to interpret not only ancient but even recent statutes in India.