MODEL TEST PAPER 1

FINAL (NEW) COURSE

PAPER 4: CORPORATE AND ECONOMIC 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. (d)

15. (a)

16. (a)

17. (c)

18. (d)

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,—

(a) 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;

(b) 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 Rs 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 the above specified requirement under the Companies Act, 2013.

(B) (i) As per **Regulation 17** of the SEBI(LODR) Regulations, 2015, the composition of board of directors of the listed entity shall be as follows:

(a) Board of Directors shall have an optimum combination of executive and nonexecutive directors **with at least one woman director** and not less than fifty per cent. of the board of directors shall comprise of non-executive directors;

(b) where the chairperson of the Board of Directors is a **non-executive director**, at least one-third of the Board of Directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors.

Any fraction in number, shall be rounded off to the nearest number.

So one-third of 14 comes to 4.66, rounded off to 5. So at least 5 independent directors should be there.

(ii) Regulation 17(1)(b) of SEBI (LODR) Regulations, 2015 states that where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a **regular non-executive chairperson**, at least half of the board of directors shall comprise of independent directors.

Any fraction in number, shall be rounded off to the nearest number.

So one-half of 14 comes to 7. So at least 7 independent directors should be there.

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 Rs 400 lakh only.

(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.

4. (A) (i) As per section 28B of the Securities and Exchange Board of India Act, 1992, Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased:

Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

For the purposes of sub-section (1), any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

Explanation.--For the purposes of this section "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

Here, penalty of ₹ 70 lakhs was imposed on Mr. Vasumadan Lal vide order of SEBI dated 14th April, 2021, and he passed away on 25th May, 2021. So, the penalty had been imposed before his death.

Further, he had refrained from paying the penalty for which recovery proceedings could have been initiated against him by the Recovery Officer but as he passed away because of which as per section 28B(2), as aforesaid, such recovery proceedings might be initiated against his legal representative and all the provisions of the SEBI Act, 1992, would apply accordingly.

Mr. Rajgopal Lal would be considered as the legal representative of Mr. Vasumadan as he inherited his estate.

Thus, it was valid for the Recovery Officer to initiate the recovery proceedings against Mr. Rajgopal as per section 28B of the SEBI Act, 1992.

(ii) As per section 28B of the Securities and Exchange Board of India Act, 1992, every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

The liability of a legal representative under this section shall be limited to the extent to which the estate of the deceased is capable of meeting the liability.

Though the penalty amount recoverable is ₹ 70 lakhs but the amount that would be recovered from Mr. Rajgopal shall be limited to the extent to which the estate of the deceased was capable of meeting the liability i.e. to the extent of ₹ 60 lakhs.

However, the said estate included a property of ₹ 25 lakhs which was mortgaged by Mr. Rajgopal for taking a bank loan. So for paying the sum of ₹ 25 lakhs, Mr. Rajgopal would be personally liable as he has created a charge in the property included in the estate and the remaining amount i.e. ₹ 35 lakhs (₹ 60 lakhs - ₹ 25 lakhs) would be required to be paid by him from the charge free assets of the estate.

(B) As per the Section 32A(2) of the Insolvency and Bankruptcy Code, 2016, no 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-

(a) 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;

(b) 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.

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:—

  (a) concealment; or

  (b) possession; or

  (c) acquisition; or

  (d) use; or

  (e) projecting as untainted property; or

  (f) 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) The contention of Raghav that the notice of every Board Meeting is to be mandatorily sent to all the directors of the company is to be analysed with reference to Section 173 of the Companies Act, 2013 which deals with 'Meetings of Board'.

According to Section 173 (3) of the said Act, a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting:

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Section 173 (4) prescribes that every officer of the company whose duty is to give notice under Section 173 and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.

It is worth noting that Section 173 (3) makes it mandatory to send written notice of a Board Meeting to every director. It states that a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

In view of the above provisions, the contention of Raghav that the notice of every Board Meeting is to be mandatorily sent to all the directors of the company is valid. If the Board Meeting is held on a date prescribed by Clause 36 of the Articles of Association of Swasth Medical Pharmacy Limited and no notice is sent to the directors of the company, it shall be violative of Section 173 (3) of the Companies Act, 2013.

Even Sub-section (4) of Section 173 imposes a penalty of ₹ 25,000 on every officer of the company whose duty is to give notice under Section 173 and who fails to do so. Thus, notice of the Board Meeting must be sent as per the provisions of Section 173(3) irrespective of what is contained in the Articles otherwise, the officer who is required to send notice but fails to fulfill his duty *i.e.* does not send notice, shall be liable to a penalty of ₹ twenty-five thousand.

(B) Section 63 of the Arbitration and Conciliation Act, 1996 provides that -

1. There shall be one conciliator unless the parties agree that there shall be two or three conciliators.
2. Where there is more than one conciliator, they ought, as a general rule, to act jointly.

Further Section 64, specifies, Procedure of Conciliation – once the conciliators have been appointed both parties are required to submit their statements in writing, supply documents and other evidence to the conciliator. The conciliator then provides a copy of the statements, documents and other evidence of one party to the other party. The conciliator is then required to encourage and assist parties to engage in discussions based on the information to arrive at a settlement.

(C) Section 22 of the IBC, 2016 deals with the matter relating to the appointment of resolution professional. It provides that the committee of creditors, may, in the first meeting, by a **majority vote of not less than sixty-six per cent. of the voting share of the financial creditors**, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

Further, where the committee of creditors resolves to replace the interim resolution professional, it shall file an application before the Adjudicating Authority.

Adjudicating Authority shall forward the name of the resolution professional proposed to the Board for its confirmation and shall make such appointment after confirmation by the Board.

Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

Thus the CoC can by majority of vote of 66% of the voting shares of financial creditors can replace the existing IRP to another RP in the above stated manner.