MOCK TEST PAPER 1

FINAL (NEW) GROUP I

PAPER 4: CORPORATE AND ECONOMIC LAWS

Suggested answers

Division A: Multiple Choice Questions

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

Division B: Descriptive questions (70 Marks)

1. (a) As per Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act.

Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

In the above question, Mr. Ramakant was going abroad for personal cause of family issue related his daughter, does not effect on the appointment of alternate director. Even if Mr. Subh does not

satisfy the eligibility criteria to become Independent Director of SIL, it does not affect on his appointment as Alternate Director because Mr. Ramakant, the original director is also not an Independent Director. Since Mr. Ramakant has returned to India within 2 months before his scheduled arrival, Mr. Subh shall vacate the office on return of Mr. Ramakant (Original Director) to India.

Therefore, Mr. Subh can be appointed as alternate director of SIL and he shall vacate his office on returning of Mr. Ramakant to India. The alternate director, Mr. Subh, shall not be included in the "total number of directors" for the purpose of section 152(6), as alternate director is holding alternate directorship in place of the original director. Further as per the above provisos given under section 161(2), it is clearly stated that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director. For this very purpose, Mr. Subh, will not be included in the "total number of directors" as rotational director under section 152(6) of the Companies Act, 2013.

(b) As per Section 203(3) of the Companies Act, 2013, a Whole-Time Key Managerial Personnel shall not hold office in more than one company except in its subsidiary company at the same time.

Provided that nothing contained in this sub-section shall disentitle a Key Managerial Personnel from being a director of any company with the permission of the Board.

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

In the above question, Mr. Ram cannot be appointed as Whole-Time Director in Raja Ltd because Raja Ltd. is not the subsidiary company of GIL. Mr. Mohan can be appointed as Managing Director in Raja Ltd. if all the conditions specified in section 203(3) are complied with.

Therefore, Mr. Ram cannot be appointed as Whole-time Director in Raja Ltd. whereas Mr. Mohan can be appointed as Managing Director in Raja Ltd. with the unanimous resolution being passed at the Board Meeting.

Where, if the office of Mr. Ram is vacated on 1st September 2020, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy i.e. latest by 31st March, 2021.

2. (a) As per Section 218 of the Companies Act, 2013, if during the course of any investigation of the affairs and other matters of or relating to a company, other body corporate or person under section 210, section 212, section 213 or section 219 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, other body corporate or person, under section 216; or

During the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter XVI,

such company, other body corporate or person proposes—

(i) to discharge or suspend any employee; or

(ii) to punish him, whether by dismissal, removal, reduction in rank or otherwise; or

(iii) to change the terms of employment to his disadvantage, the company, other body corporate or person, as the case may be,

shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.

Where if, no objection is received: If the company, other body corporate or person concerned does not receive within 30 days of making of application, the approval of the Tribunal, then and only then, the company, other body corporate or person concerned may proceed to take against the employee, the action proposed.

Where if objection is received: If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of such fees as may be prescribed.

Order of Appellate Tribunal: The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

In the above question, since the Doomed Ltd. have received the objection of the Tribunal within 30 days from the date of making application, so the Doomed Ltd. can prefer an appeal against the order of the Tribunal to the Appellate Tribunal within 30 days. No further appeal can be preferred against the order of the Appellate Tribunal by the company or the employee concerned.

Therefore, Doomed Limited can prefer an appeal against the order of objection of Tribunal within 30 days to the Appellate Tribunal and if the decision of the Appellate Tribunal is against Mr. happy, then he cannot appeal further against the order of the Appellate Tribunal.

(b) Retention of seized property

As per section 20 of the Prevention of Money Laundering Act, 2002 [PMLA], property seized under section 17 or 18 of the Prevention of Money Laundering Act or frozen under section 17(1A) of the Prevention of Money Laundering Act can be retained by authorised officer, if he has reason to believe that such property is required to be retained for adjudication under section 8 of Prevention of Money Laundering Act .The property can be retained for a period of 180 days from day on which the asset was seized or frozen. Details of property seized or frozen have to be informed to Adjudicating Authority in prescribed manner.

The seized property is required to be returned to person from whom it was seized after 180 days, unless Adjudicating Authority permits retention of property beyond this period.

Time period for retention of such seized property : As per section 17(4) of the PMLA, 2002, the authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.

As Mr. Y seized the property of Mr. X on 10.2.2020. He can file an application requesting for retention of such property seized before Adjudicating Authority latest by 13th March, 2020.

3. (a) As per Section 328 of the Companies Act, 2013,where a company has given preference to a person who is one of the creditors of the company or a surety or guarantor for any of the debts or other liabilities of the company, and the company does anything or suffers anything done which has the effect of putting that person into a position which, in the event of the company going into liquidation, will be better than the position he would have been in if that thing had not been done prior to six months of making winding up application, the Tribunal, if satisfied that, such transaction is a fraudulent preference may order as it may think fit for restoring the position to what it would have been if the company had not given that preference.

If the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, and execution made, taken or done by or against a company within

six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

In the question, the company had created a legal mortgage on 22nd May, 2020 and the creditors made a petition for winding up of the company on 23rd September, 2020, so the above transaction of creation of legal mortgage on the freehold land of the company falls within the ambit of section 328 of the Act.

Therefore, creation of mortgage of the freehold land of the company is the transaction covered under the fraudulent preference since the mortgage is created 6 months preceding the date of making of winding up petition and therefore, the Tribunal may order as it may think fit and may declare such transaction on creation of mortgage as invalid and restore the position.

(b) As per section 3(6) of the SARFAESI Act, 2002, every asset reconstruction company, shall obtain prior approval of the Reserve Bank for any substantial change in its management including appointment of any director on the board of directors of the asset reconstruction company or managing director or chief executive officer thereof or change of location of its registered office or change in its name:

Provided that the decision of the Reserve Bank, whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not, shall be final.

Explanation— For the purposes of this section, the expression "substantial change in management" means the change in the management by way of transfer of shares or change affecting the sponsorship in the company by way of transfer of shares or amalgamation or transfer of the business of the company.

In the above question, there has been change in shareholding of directors which falls under the "substantial change in management" including appointment of CEO and the decision of the Reserve Bank as to whether the change in management of the asset reconstruction company is a substantial change in management or not, shall be final.

Therefore, the decision of the Reserve Bank, shall be final and will be held valid.

4. (a) As per section 21A of the Securities Contracts (Regulation) Act, 1956 read with Rule 21 of the Securities Contract (Regulation) Rules, 1957, a recognised stock exchange may delist the securities, after recording the reasons therefor, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act:

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities

Following are the grounds namely:—

(a) the company has incurred losses during the preceding three consecutive years and it has negative net worth;

(b) trading in the securities of the company has remained suspended for a period of more than six months;

(c) the securities of the company have remained infrequently traded during the preceding three years;

(d) the company or any of its promoters or any of its director has been convicted for failure to comply with any of the provisions of the Act or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 or rules, regulations, agreements made thereunder,

as the case may be and awarded a penalty of not less than rupees one crore or imprisonment of not less than three years;

(e) the addresses of the company or any of its promoter or any of its directors, are not known or false addresses have been furnished or the company has changed its registered office in contravention of the provisions of the Companies Act; or

(f) shareholding of the company held by the public has come below the minimum level applicable to the company as per the listing agreement under the Act and the company has failed to raise public holding to the required level within the time specified by the recognized stock exchange.

In the above question, the net worth of the company has not become negative. Therefore, either the company or Mr. Binay may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange within 15 days from the date of the decision.

(b) Vide Notification no. SO 1911(E) dated 14-6-2017, read with section 55(2) of the Insolvency and Bankruptcy Code, the Central Government prescribed the following class of corporate debtors on whom the provisions pertaining to the fast track corporate insolvency resolution process are applicable-

(a) Small company under section 2(85) of the Companies Act

(b) A start-up (other than partnership firm)

(c) An unlisted company with total assets not exceeding Rupees one crore as per financial statement of immediately preceding the financial year.

As per section 56 of the Code, the fast track corporate insolvency resolution process shall be completed within a period of 90 days from the insolvency commencement date. The Adjudicating Authority may on receipt of an application extend the duration of such process by 45 days.

Provided that any extension of fast track corporate insolvency resolution process under this section shall not be granted more than once.

In the above question, the fast track insolvency resolution process is not applicable on the Defaulter Ltd. because the total assets exceed rupees one crore, so the financial creditors of the company cannot file an application under the fast track insolvency. Turnover of the company has no relevance in deciding whether fast track corporate insolvency resolution is applicable on the company or not.

Therefore, an application for fast track insolvency resolution cannot be made. The insolvency resolution process shall be completed within 180 days from the insolvency commencement date and extendable by maximum 90 days.

5. (a) (i) "Resolved that the draft of the Directors 'Report for the year ended 31st March, 2020, as submitted before the meeting, duly initiatalled by the Chairman of the meeting for the purpose of identification, be and is hereby considered and approved by the Board and that the same be signed on behalf of the Board of Directors of the company by Mr….. Director and Mr. ….., Director.

Resolved further that pursuant to provisions stipulated under sub-section 3 of the Section 179 of the Companies Act, 2013 read with Companies (Meetings of Board and the powers) Rules, 2014, all the directors of the company be and is hereby severally authorised to file the resolution with the Registrar of Companies,…. Along with requisite e-Form."

(ii) The given problem deals with the Companies Act, 2013 to be read in light of notification No. 464 (E), dated 05-06-2015 w.r.t. section 196(4), where by a private company is exempted from the application of said section.

Section 196 (4) requires that the terms and conditions of appointment of a Managing Director and the remuneration payable to him shall be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next General Meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Part I of the Schedule V.

Therefore, there is no requirement regarding the approval of appointment of Mr. Pranav as MD in the Earth Developers Private Limited, at the immediate next General Meeting of the shareholders. Therefore his appointment as MD in Earth Developers Private Ltd., is valid.

(b) Direct investment outside India/overseas direct investment means investments, either under the Automatic Route or the Approval Route, by way of:

(i) contribution to the capital or subscription to the Memorandum of a foreign entity or

(ii) purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, signifying a long-term interest in the foreign entity (JV or WOS).

Difference between Automatic Route and Approval Route for direct investment

Automatic route for direct investment or financial commitment outside India: An Indian Party has been permitted to make investment/ undertake financial commitment in overseas Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank.

With effect from July 03, 2014, it has been decided that any financial commitment (FC) exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route [i.e., within 400% of the net worth (Paid up capital + Free Reserves) as per the last audited balance sheet].

Approval route for direct investment or financial commitment outside India:

(i) Prior approval of the Reserve Bank would be required in all other cases of direct investment (or financial commitment) abroad.

(ii) Reserve Bank would, inter alia, take into account the following factors while considering such applications:

(a) Prima facie viability of the JV / WOS outside India;

(b) Contribution to external trade and other benefits which will accrue to India through such investment (or financial commitment);

(c) Financial position and business track record of the Indian Party and the foreign entity; and

(d) Expertise and experience of the Indian Party in the same or related line of activity as of the JV / WOS outside India.

Therefore, under the approval route (proposals not covered by the conditions under the automatic route) prior approval of the Reserve Bank would be required. For which a specific application in Form ODI with the documents prescribed therein is required to be made through the Authorized Dealer Category – I banks.

6. (a) Under section 380(1) of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration the following documents:

(1) a **certified copy of the charter, statutes or memorandum and articles**, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;

(2) the full **address of the registered or principal office** of the company;

(3) a **list of the directors and secretary** of the company containing such particulars as prescribed under the Companies (Registration of Foreign Companies) Rules, 2014,

(4) the **name and address or the names and addresses of one or more persons resident in India** authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(5) the full **address of the office of the company in India** which is deemed to be its principal place of business in India;

(6) particulars of opening and closing of a **place of business in India** on earlier occasion or occasions;

(7) **declaration** that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(8) **any other information** as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

(b) **(i)** As per Provisions laid down in section 52 of the Insolvency and Bankruptcy Code, 2016, an option is given to secured creditor to realize its security interest by informing liquidator in respect of such security interest and identify assets subject to which such security interest has to be realized. Therefore, it is not mandatory under Code proceedings for financial creditor to be a part of CoC (Committee of Creditors) to enforce its security interest. Hence, application filed by Financial creditor was to be accepted.

Therefore the stand taken by the liquidator on his denial to the XYZ Bank Ltd. to enforce its security interest on the account that secured creditor is not a part of Committee of creditors, is not valid.

(ii) Money Laundering basically is knowingly dealing with proceeds of crime, directly or indirectly. The Act provides both for civil and criminal liability.

Criminal liability under the Prevention of Money Laundering Act

Crime which results in tainted money is a separate offence under various laws as specified in Schedule to Prevention of Money Laundering Act. These offences are punishable under those Acts. The punishment is to the person/s who is/are involved in actually committing that offence.

The offence as specified in section 4 of the Prevention of Money Laundering Act is a separate offence. The punishment under section 4 of Prevention of Money Laundering Act is not only to those who are actually involved in dealing with tainted money but also on those who are knowingly involved, directly or indirectly, in dealing with proceeds of crime.

This is a criminal offence, which will be tried by special courts designated for this purpose under section 2(*z*) of the Prevention of Money Laundering Act. The trial will be both for charges under the specific Act which is a crime and also offence of money laundering under Prevention of Money Laundering Act. However, it is not 'joint trial'.

Civil Liability i.e. confiscation of tainted property

In addition to criminal liability, the property involved in money laundering can be attached and frozen by Central Government and later confiscated.