MOCK TEST PAPER 1

FINAL COURSE GROUP I

PAPER 4: CORPORATE AND ECONOMIC LAWS

SUGGESTED ANSWERS

Answers to Multiple choice questions (30 Marks)

Case scenario 1

1. (c)

2. (b)

3. (d)

4. (d)

5. (c)

Case scenario 2

6. (d)

7. (d)

8. (b)

9. (b)

10. (b)

11. (a)

12. (c)

13. (b)

14. (c)

15. (b)

16. (a)

17. (b)

18. (b)

19. (d)

DIVISION B: Answers to Descriptive questions (70 Marks)

1. (a) The validity of Rachna's contention is to be viewed in the light of Section 186 of the Companies Act, 2013.

Section 186 (2) states that no company shall directly or indirectly —

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, whichever is more.

Explanation: For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company

Section 186 (3) states that where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided **unless previously authorised by a special resolution passed in a general meeting**:

Exemption: Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, **the requirement of this sub-section shall not apply**:

Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4).

Particulars of loan to be disclosed: According to Section 186 (4), the company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

We may also refer Rule 11 (1) of the Companies (Meetings of Board and its Powers) Rules, 2014 which states that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of sub-section (3) of section 186 shall not apply:

Provided that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4) of section 186.

Conclusion: In view of the above provisions, Rachna's contention is not valid. Proviso to Section 186 (3) clearly states that where a guarantee is given by a company to its wholly owned subsidiary company, the requirement of Section 186 (3) shall not apply. Similarly, Rule 11 (1) also states that the requirement of sub-section (3) of section 186 shall not apply if a guarantee is given by a company to its wholly owned subsidiary company. Thus, there is no need to pass a resolution in the general meeting of the shareholders for seeking their approval since NHSPL is permitted to stand as guarantor for the loan raised by its wholly-owned subsidiary RTL.

The only requirement is that NHSPL should disclose to the members in the financial statement the full particulars of the guarantee given and the purpose for which guarantee is proposed to be utilised by the recipient of the guarantee as provided under sub-section (4) of section 186.

(b) The given issue to be dealt with Section 168 of the Companies Act, 2013 read with Rules 15 and 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014, which deals with the resignation of a director.

According to Section 168 (1) a director may resign from his office by **giving a notice in writing** to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:

Provided that a director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

Note (a): Rule 15 requires the company to intimate the Registrar within 30 days from the date of receipt of notice of resignation from a director in Form DIR-12 and post the information on its website, if any.

Note (b): Rule 16 states that where a director resigns from his office, he may within a period of thirty days from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form DIR-11 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Effective date of resignation: Section 168 (2) states that the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

In view of the above provisions, we can analyse the cited situations as under:

(i) Sub-section (1) of Section 168 permits a director to resign from his office by giving a notice in writing to the company and the same can be done any time at the discretion of the director who intends to resign. Neither there is requirement of acceptance of resignation by the Board or other directors nor the resignation can be postponed to any other date.

Thus, the directors of SMIL cannot compel Anuj Sharma to continue as director citing that the Registrar of Companies (RoC) was not informed in advance regarding submission of resignation.

It is the responsibility of SMIL, after the receipt of resignation from Anuj Sharma on 18th July, 2021, to intimate the Registrar in Form DIR-12 within 30 days. In fact, as per sub-section (2), the effective date of resignation shall be 18th July since Anuj Sharma has not mentioned any other date in his resignation notice to be the date from which the resignation will take effect.

Keeping in view provisions of Rule 16, Anuj Sharma may within a period of thirty days from the date of resignation, forward to the Registrar a copy of his resignation notice along with reasons for resigning from the company in Form DIR-11, duly paying the requisite fee. This Rule, in no way authorises the company or the Board of Directors not to accept the resignation or postpone its effectiveness to some other date.

(ii) The provisions of Section 168 of the Companies Act, 2013 [read with Rules 15 and 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014] are equally applicable to a private company. Thus, resignation of Anuj Sharma would have taken effect from 18th July 2021 *i.e.* the date on which resignation notice was received by SMIL even if it was a private company; and there would have been no possibility of refusal or postponement of resignation by the Board of Directors or SMIL just because SMIL was a private company and the directors could take their own decisions.

2. (a) (i) As per section 242 of the Companies Act, 2013,the alterations made by the order in the Memorandum or Articles of a company shall have the same effect in all respects as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the Memorandum or Articles so altered.

A certified copy of every order altering, or giving leave to alter, a company's Memorandum or Articles, shall be filed by the company with the Registrar who shall register the same within 30 days after the making thereof.

In the instant case, the Tribunal ordered for alteration of the Articles of Lebtuk Ltd. so as to restrict the powers of Board to a certain extent and accordingly, the Articles were amended as per the order on 22nd November, 2021.

Conclusion: Accordingly, as per the aforesaid provisions, such alteration would have the same effect in all respects as if they had been duly made by the company in accordance with the provisions of the Companies Act, 2013, and the Registrar needs to register the same at the latest by 5th December, 2021 i.e. within 30 days of filing the order by the company on 5th November, 2021.

(ii) As per section 242 of Companies Act, 2013, where an order of the Tribunal makes any alteration in the Memorandum or Articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power (except to the extent, if any, permitted in the order) to make, any alteration whatsoever which is inconsistent with the order, either in the Memorandum or in the Articles without the leave of the Tribunal.

Here, Mr. Ramesh Puri, CEO of Lebtuk Ltd. proposed a change to be made by the company in the Articles which appeared to be inconsistent with the order of Tribunal and accordingly, such a change cannot be made without the leave of the Tribunal.

Conclusion: If the company makes such a change in the articles inconsistent with the order of Tribunal without the leave of the Tribunal, then the company and every officer in default would be liable for punishment as per sub-section (6) of section 242. According to which the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(b) As per the provision of Section 54K of the Insolvency and Bankruptcy Code, 2016, following is the manner to initiate the PPIRP:

1. **Submission of BRP:** The corporate debtor (CD) shall submit the base resolution plan (BRP) to the resolution professional (RP) within 2 days of the pre-packaged insolvency commencement date (ICD).
2. **Presentation of BRP to CoC:** The RP shall present the same, to the committee of creditors (CoC).
3. **Given opportunity to revise the BRP**: The CoC may provide the CD an opportunity to revise the BRP prior to its approval or invitation of Prospective Resolution Applicant (PRA), as the case may be.
4. **After approval submitted to AA:** The CoC may approve the BRP for submission to the AA if it does not impair any claims owed by the CD to the Operational Creditors.
5. **If BRP is biased:** Where-
   a. the CoC does not approve the BRP under sub-section (4); or
   b. the BRP impairs any claims owed by the CD to the OC,

   the RP shall invite PRA, to submit a resolution plan(s), to compete with the BRP, in such manner as specified.
6. **Fulfilment of criteria laid down by RP:** The RA submitting resolution plans pursuant to invitation shall fulfil such criteria as may be laid down by the RP with the approval of the CoC, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified.
7. The RP shall provide to the RA:
   (a) the basis for evaluation of resolution plans as approved by the CoC; and

(b) the relevant information referred to in section 29 i.e., Information Memorandum.

In the given case, Nature Limited, a MSME which is undergoing PPIRP has prepared a BRP that impairs the claims owed to operational creditors. In such a case, in view of the above provision, the RP can invite claims from the PRAs in the manner specified above.

Conclusion: It is not mandatory for the CoC to approve the BRP submitted by the CD. In case where the BRP impairs the claim owed to operational creditors, the CoC may either provide an opportunity to revise the plan or shall invite claims from PRAs and select the most suitable plan.

3. (a) (i) As per the Companies (Registered Valuers and Valuation) Rules, 2017, a person shall be eligible to be a registered valuer if, inter-alia, he has not been levied a penalty under section 271J of Income-tax Act, 1961 and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and 5 years have not elapsed after levy of such penalty.

In the instant case, Mr. Rajil was levied a penalty by the Commissioner (Appeals) for furnishing incorrect information in one report and a certificate issued by him to one another company, relating to valuation i.e. under section 271J of the Income Tax Act, 1961.

In the appeal, the ITAT had confirmed the said penalty levied by the Commissioner (Appeals) and passed its order on 20th November, 2018.

Here, 5 years from levy of such penalty had not elapsed and so, Mr. Rajil can be considered to have contravened the law by accepting appointment as a registered valuer of WNDS Ltd. as he was not eligible to be appointed as a registered valuer.

(ii) As per Section 247 of the Companies Act, if a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be liable to a penalty of fifty thousand rupees. However, if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than ₹1 Lakh but which may extend to ₹5 lakhs.

Further, where a valuer has been convicted as aforesaid, he shall be liable to—

(i) refund the remuneration received by him to the company; and

(ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

Here, since Mr. Rajil have contravened the provisions of the Companies (Registered Valuers and Valuation) Rules, 2017 by accepting appointment as a registered valuer of WNDS Ltd., therefore, following consequences could arise on him:-

(i) **Levy of penalty** of ₹ 50,000 and if he intended to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 5 lakhs.

(ii) **Refund** of remuneration of ₹ 88,000 received by him to the company.

(iii) **Pay for damages** to the company or to any other person for loss arose due to furnishing of incorrect or misleading statements of particulars, if any, made in his report.

(b) (i) According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year but does not include a person who has come to or stays in India, for or on taking up employment in India.

As per Schedule III to the Foreign Exchange Management (Current Account Transactions) Rules, 2000,

For a person who is resident but not permanently resident in India and-

(a) is a citizen of a foreign State **other than** Pakistan; or

(b) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company,

may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

Explanation: For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident.

Fact of the case & Conclusion: Mr. Ashok is a citizen of India working in a company in USA and has been deputed to its branch in India for a duration of 26 months i.e. for not more than 3 years and Mr. Ashok's stay in F.Y. 2020-21 was more than 182 days in India, so, he would be considered as a resident but not permanently resident in India.

Accordingly, he was allowed to remit an amount upto his net salary i.e. $ 2,70,000 ($ 3,50,000 - $ 40,000 - $ 40,000) while he has remitted an amount of $ 2,80,000 to his family in USA.

Thus, the excess amount remitted by him is $ 10,000 ($ 2,80,000 - $ 2,70,000).

(ii) As per *Explanation to* **Section 2(1)(g) of the FCRA, 2010,**— a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation,—

(a) has a subsidiary or a branch or a place of business in two or more countries or territories; or

(b) carries on business, or otherwise operates, in two or more countries or territories;

Facts: Mr. Ashok has been working in a company in Chicago, USA since last 8 years and the said company opened its branch in India last year.

So, it appears that the said company had been incorporated in USA and operating in USA since a long time and has also started its operations in India by opening a branch in India.

Thus, the company in USA in which Mr. Ashok is deputed, can be treated as MNC under FCRA, 2010 as it is carrying on business or operating in two countries i.e. USA and India, respectively.

4. (a) (i) The Tribunal had passed an order pursuant to subsection (4A) of section 242 of the Companies Act, 2013, as the case had been referred to it by the Central Government to decide whether Mr. Sujay was fit and proper person or not.

As per section sub-sections (1A) and (1B) of the 243 of the Companies Act, 2013, the person who is not a fit and proper person pursuant to subsection (4A) of section 242, shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

Notwithstanding anything contained in any other provisions of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

Conclusion: Here, Mr. Sujay was not entitled for such compensation for early termination of his office, despite of the terms of the contract, as his termination was pursuant to order of Tribunal passed under subsection (4A) of section 242 of the Companies Act, 2013.

(ii) As discussed aforesaid, as per sub-section (1A) to the Companies Act, 2013, Mr. Sujay was not entitled to hold the office of a director or any other office connected with the conduct and management of the affairs of **any company** for a period of five years from the date of the said decision.

The decision was given by the Tribunal on 20th June, 2021 and so till 20th June, 2026, Mr. Sujay was not entitled to hold such office except with the permission of the Central Government accorded by the leave of Tribunal.

Conclusion: If Mr. Sujay had been appointed as a non-executive director in other company without the permission of the Central Government, then he and every other director of such other company who is knowingly a party to such contravention, shall be liable to punishment as per the provisions of sub-section (3) to Section 243, as follows:-

Any person (i.e. Mr. Sujay) who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) or sub-section (1A), and every other director of the company who is knowingly a party to such contravention, shall be punishable **with fine which may extend to five lakh rupees**.

(b) (i) Mr. Shubh (the resolution professional) will have to consider the following factors while examining the resolution plan before taking it to the Committee of Creditors for approval:

a. Whether the resolution plan provides for the **payment of insolvency resolution process costs** in a manner specified by the Board in priority to the payment of other debts of the corporate debtor

b. Whether the resolution plan provides for the **payment of debts of operational creditors** in such manner as may be specified by the Board which shall not be less than higher of:

   1. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

   2. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

c. Whether the resolution plan provides for **the management of the affairs of the Corporate debtor** after approval of the resolution plan;

d. Whether the resolution plan provides for the i**mplementation and supervision of the resolution plan**

e. Whether the **resolution plan contravene any of the provisions** of the law for the time being in force

f. Whether the **resolution plan confirms to such other requirements** as may be specified by the Board.

(ii) As per section 63 of the Prevention of Money Laundering Act, 2002, any person willfully and maliciously giving false information and so causing an arrest or a search to be made under this Act, shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.

Accordingly, Mr. Ram, here in the said instance, wilfully gives false information in order to take revenge, shall be liable for imprisonment for a term which may extend to two years or with fine extending to ₹ 50,000 or both.

5. **(a)** (i) As per the explanation given under section 186 of the Companies Act, 2013, an investment company means a company whose principal business is the acquisition of shares, debentures or other securities and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent of its total assets, or if its income derived from investment business constitutes not less than fifty per cent as a proportion of its gross income.

Facts: In light of the above explanation, the assets of XYZ Ltd. in form of investment in shares or debentures is less than fifty percent of the total assets of the company and also the income derived from the investment business is less than fifty percent of the total income of the company. Hence, either of the two conditions need to be satisfied to make an investment company and, in this case, neither of this condition is satisfied. So, XYZ Ltd. cannot be an investment company for the purpose of Section 186.

(ii) As per section 186(5) of the Companies Act, 2013, no investment shall be made or loan or guarantee or security given by the company, unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained.

So, in this case the Board of Directors of XYZ Ltd. while considering the proposal for making the investment in ABC Ltd. has not complied with the provision of section 186(5) of the Companies Act, 2013, where the consent of all the directors present at the meeting is required. The resolution of the board of directors therefore is not valid and has no legal effect.

(b) According to section 5 of the Prevention of Money Laundering Act, 2002, where the Director or any other officer (not below the rank of Deputy Director authorised by the Director), has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(i) any person is in possession of any proceeds of crime; and

(ii) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed.

Provided further that, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Computation of period of attachment: Provided also that for the purposes of computing the period of 180 days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding 30 days from the date of order of vacation of such stay order shall be counted.

No effect on the right to enjoy the property: This section shall not prevent the person interested in the enjoyment of the immovable property attached from such enjoyment.

Here, "**person interested**", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

In the given case, Mr. Beta, son of Mr. Bemaan can occupy the flat during the period of provisional attachment if he claims to have any interest in the said property.

6. (a) The provisions of the Arbitration and Conciliation Act, 1996 outlines the requirements of a valid arbitration agreement. One of such requirements is clarity of consent i.e. the intention to go to arbitration must be clear in other words there must be consensus ad idem. Utilization of vague words cannot be considered as adequate.

Further the Arbitration and Conciliation Act, 1996 envisages the possibility of an arbitration agreement coming into being through incorporation i.e. arbitration agreement through reference. In other words, parties to an agreement could agree to arbitrate by referring to another contract, containing an arbitration agreement.

Facts and conclusion: In the given scenario, it was an arbitration agreement through reference, but the terms and conditions of the said agreement were not clear and vague and therefore the said agreement is not a valid arbitration agreement as the italicized portion in the agreement clearly highlights the need for further agreement between the parties.

Accordingly in the given instance, the parties will not be able to refer the disputes, if any, to arbitration since the terms and conditions of arbitration agreement through reference are vague and not clear and thus the arbitration agreement is not valid in law.

(b) (i) Regulation 17A(1) of the SEBI (LODR) Regulations, 2015 provides that a person shall not be a director in more than **eight listed entities** with effect from April 1, 2019 and not in **more than seven listed entities with effect from April 1, 2020.**

Ava can continue of having directorship in 8 listed entities up to 31st March 2019 only, but from 1st April, 2020 the number of directorships in listed entities have been reduced to 7 from 8.

(ii) Regulation 17A(2) of the SEBI (LODR) Regulations, 2015 provides that any person who is serving as a WTD / MD in any listed entity shall serve as an independent director in not more than 3 listed entities.

Hence Ava, besides holding the position of WTD, can serve as an Independent Director maximum up to 3 listed companies only.

(iii) Regulation 18(1)(d) of the SEBI(LODR) Regulations, 2015 provides that the chairperson of the audit committee shall be an independent director and he /she shall be present at Annual general meeting to answer shareholder queries.

Since, Ava is an independent director with a CA qualification, hence she can be the Chairperson of Audit Committee of Board.