EXAMINATION OF ARTICLES CLERKS

PAPER II

COMPANY LAW

Wednesday, 17th April, 2024

TIME: 3 HOURS [1.00 PM to 4.00 PM]

TOTAL MARKS – 100

Note:

1. Answers to be short and precise. As far as possible, please respond in bullet points.
2. Please read the questions carefully before responding.

Q.No.	Question	Marks
1.	Mr. Control and Mr. Owner are shareholders of a company. They would like to ensure that while Mr. Control has 40% economic interest in the Company, Mr. Control enjoys 75.01% voting rights in the Company. Correspondingly, Mr. Owner will have 60% economic interest in the Company while exercising only 24.99% voting rights. Mr. Control and Mr. Owner are seeking your advice on the best possible manner in which this can be achieved. Please comment in two scenarios, assuming the Company is a private limited company and assuming the company is a public limited company.	10
2.	Mr. Superpower owns 45% of the share capital of a public company, Majority Minority Limited. Under the Articles of Association of Majority Minority Limited, Mr. Superpower is entitled to appoint a majority of the board of directors of Majority Minority. At the annual general meeting of Majority Minority, the shareholders of the Company keep voting down the nominees of Mr. Superpower since they are entitled to exercise majority voting rights and appointment of directors requires an ordinary resolution. Mr. Superpower is seeking your advice on his rights in these circumstances. Specifically, is Mr. Superpower's right under the Articles of Association to appoint majority of directors of Majority Minority enforceable? If so, what remedies does Mr. Superpower have under the Companies Act to enforce these rights.	10

3. Too Many Shareholders Limited is owned 97% by Ms. Promoter. There are 1000 minority shareholders in Too Many Shareholders Limited. Ms. Promoter is desirous of providing an exit to these minority shareholders to ensure that the 1000 minority shareholders are no longer shareholders of the company. 5

Please advise on the options available to Ms. Promoter to achieve this result and the risks associated with the process.

4. Please list 5 matters requiring special resolution of shareholders in a public company under the Companies Act. 5

5. Please list 5 matters which cannot be approved by the board of directors of a public company by way of circular resolution. 5

6. Please confirm whether the following are true or false along with reasons / reference to the relevant provision of law: 20

a. Every company must have a director who is a person resident in India.

b. A company can buy-back 5% of its paid up share capital without shareholder approval.

c. Mr. Relative holds 60% in Family Limited. 20% is held by Mr. Relatives daughters. At a shareholders meeting, it is proposed to allot further shares to Mr. Relative by way of a preferential allotment under Section 62(1)(c) of the Companies Act. At such shareholders meeting, Mr. Relative and his daughters cannot vote.

d. At the same shareholders meeting, it is proposed that Family Limited will gift prime real estate owned by Family Limited to Mr. Relative. In the resolution approving such gift, Mr. Relative cannot vote.

e. Minority shareholders of Family Limited who hold 20% of the shares of Family Limited can challenge the proposed gift under oppression and mismanagement.

f. Quorum requirements for a shareholder meeting in a private company is 1/3rd or 2, whichever is higher.

g. Every company must have a key managerial personnel under Section 203 of the Companies Act.

h. Every public company can have share capital of only two kinds – equity shares with voting rights or differential rights as to dividend or voting AND preference share capital.

i. Additional director and Alternate director are inter-changeable concepts.

j. Dividend is required to be approved by a special resolution.

7. What are the defenses available to directors of a company in proceedings initiated for violation of various provisions of the Companies Act. Please respond having regard to the following scenarios: (a) where the directors are independent directors and attended the board meetings where relevant decisions which allegedly are in violation of the Companies Act were taken, (b) where the directors are executive / whole time directors and (c) if the directors are independent directors but did not attend the board meetings where relevant decisions which allegedly are in violation of the Companies Act were taken. 5

8. Loud Limited and Speaker Limited enter into a scheme of merger whereby Loud Limited will stand merged into Speaker Limited to form Loud Speaker Limited. The merger is approved by the relevant NCLT. Prior to the merger becoming effective, Speaker Limited claims that the accounts of Loud Limited are fraudulent. Can Speaker Limited avoid the merger at this stage? What would be required for the merger to become effective and what remedies will Loud Limited have. 5

9. Mr. Promoter and Mr. Investor have entered into a shareholders agreement wherein Mr. Promoter cannot transfer shares of Double Your Money Limited without the prior consent of Mr. Investor. Mr. Investor becomes aware that Mr. Promoter is in the process of selling his shares to Mr. New Promoter in breach of the shareholders agreement. 10

What are the remedies available to Mr. Investor in the following scenarios:

a. The provisions of the shareholders agreement are incorporated in the Articles of Association of Double Your Money Limited;
b. The provisions of the shareholders agreement are not so incorporated;
c. Double Your Money is a public limited company.
d. Double Your Money is a private limited company.

10. Please comment on whether the provisions of Section 188 pertaining to related party transactions apply to the following (yes or no): 5

a. Transfer of residential premised by a company to its promoter
b. Issue of shares by a company to its promoter
c. Declaration of dividend by a company to its promoter
d. Acquiring shares of a private closely held company owned by the promoter

e. Appointing the promoter's son as managing director of the company.

11. Please articulate any five (5) key requirements applicable in relation to independent directors. You may comment on the need to appoint independent directors, their qualifications, tenure or any other relevant aspect. 5

12. Please indicate which companies are required to satisfy the following requirements: 5

a. Woman director

b. Independent director

13. Mr. Promoter had assured Mr. Investor certain returns for investing in his venture Best Returns. The performance of Best Returns has not been as expected. Mr. Promoter now intends to compensate Mr. Investor by declaring dividend and giving bonus shares. However, no other shareholder will be entitled to the dividend and bonus. There are five other minority shareholders in Best Returns. 5

In this context, please give your views on the following with one (or maximum two) key reason(s) for each sub-question:

a. Can Best Returns declare dividend and bonus in favour of Mr. Investor to the exclusion of others assuming it were a private company;

b. Would your answer change if all shareholders of Best Returns Private Limited are wiling to waive their rights to such dividend and bonus.

14. Please provide the key differences in the rights of a financial creditor and an operational creditor. 5
