

EXAMINATION OF ARTICLED CLERKS

PAPER II

COMPANY LAW

Wednesday, 13th November, 2024

TIME: 3 HOURS [1.00 PM to 4.00 PM]

TOTAL MARKS – 100

Notes:

- 1. Read the question carefully.**
- 2. Answer to every question should be on a fresh sheet of paper.**
- 3. Figures to the right indicate full marks.**
- 4. Please substantiate your answers, wherever possible, with reference to relevant provisions of law and case law, if any.**

1. (a) The Board of Directors of ABC Limited declared interim dividend. The dividend could not be distributed due to objections from the audit committee, which argued that the accounts reviewed by the Board of Directors were inaccurate. The audit committee pointed out that the true financial results were overstated due to omission of outstanding liabilities and overvaluation of stocks. **12 Marks**
- A shareholder filed a lawsuit for the non-payment of the dividend. One of the directors argued that he did not attend the board meeting where the interim dividend was declared based on misleading accounts. Discuss the validity of this Director's claim.
- (b) What do you understand by the term 'resolution by circulation'? List four matters that cannot be passed by directors through a resolution by circulation.
- (c) LMN Limited (LMN) held a meeting of its Board of Directors on July 31, 2024, at its registered office. LMN has 12 directors. 5 directors were present at the start of the meeting. During the meeting, 2 directors left, leaving three directors to continue the meeting. Discuss the validity of the decisions of the 3 directors made during the meeting.

2. (a) Naresh Shah, a member of PQR Limited (PQR), is desirous of inspecting the register of deposits maintained by PQR as authorized by the Companies Act, 2013. PQR refused Naresh's request for inspection without giving any explanation. **12 Marks**

Analyse the validity of PQR's refusal under the Companies Act, 2013. Would your answer change if the register of deposits were requested by the statutory auditors of PQR for audit?

- (b) Zeal Education Services Limited (Zeal) operates a chain of coaching classes in Mumbai. Amit Mehta, a distinguished Chemistry Professor has been appointed as a non-executive director of Zeal and seeks to be paid professional fees on a lecture-by-lecture basis for taking chemistry lectures in the coaching classes. Advise Zeal on whether this payment would constitute managerial remuneration to Amit Mehta under the Companies Act, 2013.
- (c) Can a public limited company amend its articles of association to grant itself the authority to forfeit the shares of members who have defaulted on call payments?

3. (a) On June 1, 2024, Mohit Agrawal was appointed as the Managing Director of XYZ Limited (XYZ) by the Board of Directors. Mohit's appointment required approval from XYZ's members at its forthcoming shareholders meeting. **12 Marks**

On June 9, 2024, Mohit as the Managing Director, executed an agreement for purchase of plant and machinery from MNO Private Limited (MNO) for expansion of XYZ's facilities. On June 30, 2024, XYZ's shareholders did not approve Mohit's appointment at its general meeting.

XYZ refused to accept delivery of the plant and machinery from MNO, arguing that the agreement was executed by Mohit, whose appointment was not confirmed by the members. Analyse if XYZ's refusal is valid based on this reason?

- (b) According to the provisions of the Companies Act, 2013 concerning "securities premium," specify if the amount in a company's securities premium account can be utilized for:
- (i) payment of dividends declared by the company in its general meeting; and
- (ii) issuance of bonus shares.

- (c) Clarify the meanings of the terms “fixed charge” and “floating charge.” Under what circumstances does a “floating charge” automatically convert into a “fixed charge”?
- 4. (a)** Starlight Financial Services Limited (SFS), a registered non banking finance company for the past 20 years, provided a Rs.50 crore loan to MNO Ltd. (MNO) for equipment financing as part of its regular business operations. The loan was long-term, and the equipment was purchased. However, MNO repaid Rs. 10 crore and then stopped further payments due to operational issues. Review this situation under the Insolvency and Bankruptcy Code, 2016 to answer the following questions: **14 Marks**
- (i) What type of creditor would SFS be classified as?
 - (ii) Where can SFS file the application?
 - (iii) Is an Insolvency Professional (IP) required?
 - (iv) Can SFS file a petition independently?
 - (v) What does corporate insolvency resolution process mean in the present context?
 - (vi) How long is the resolution expected to take?
 - (vii) Can MNO apply for its takeover?
- 5. (a)** Every shareholder of a company is referred to as a member, although not every member is a shareholder. Discuss. **10 Marks**
- (b) Is the appointment and rotation of statutory auditors mandatory for One Person Companies (OPC) and Small Companies.
 - (c) Can the dividend be declared out of the previous year’s profit transferred to reserve?
 - (d) Can a company issue redeemable preference shares with a redemption period exceeding 20 years?
 - (e) Discuss the effect of moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016.
- 6. (a)** EFG Hospitality Limited (EFG) filed a petition under the Insolvency and Bankruptcy Code, 2016, with the National Company Law Tribunal (NCLT) against Mars Limited (Mars), which was admitted. Later, EFG sought to withdraw the petition following a settlement between the parties. Is it allowed to withdraw a petition after it has **12 Marks**

been admitted? Analyse the legal provisions regarding the acceptance and rejection of applications by the adjudicating authority under the Insolvency and Bankruptcy Code, 2016.

- (b) RPO Limited (RPO), has a board comprising 5 directors and a Managing Director, along with a Company Secretary. The financial statements for the year ending March 31, 2024, including the balance sheet and statement of profit and loss, were authenticated by 1 director and the Company Secretary.

Evaluate the validity of this authentication according to the Companies Act, 2013. What would your answer be if RPO were a One Person Company?

- (c) A company issued a prospectus to the public, stating it has regularly paid dividends but does not specify source of profit for paying such dividend. The company has incurred losses over the past five years, and dividends were paid from capital profits. Shareholder X asserts the prospectus is misleading. Is X's assertion valid?

7. (a) Briefly analyse whether ABC Limited will accept the following persons as members of the Company

12 Marks

- (i) a trade union;
- (ii) Section 8 company under the Companies Act, 2013;
- (iii) a pawnee;
- (iv) an insolvent individual.

- (b) CDE Ltd. (CDE), a public company, is desirous of appointing alternate directors. Assess the legality of CDE 's proceedings under the Companies Act, 2013 in the following cases:

- (i) Abhay, a director, has been absent for 75 days and CDE proposes to appoint an alternate director.
- (ii) Munir, another director, has been absent for 150 days, and it is proposed to appoint Pallav as an alternate director in his place. Rohit is acting as an alternate director for Jal, who has been absent for 5 months.
- (iii) If the appointment of alternative directors is permitted, can the alternative directors be elected through a circular resolution?

- (c) A petition signed by 100 members was presented to the Tribunal to prevent mismanagement. Later, 50% of the signatories withdrew their consent after the petition was filed. Assess whether the continuing petitioners can succeed in their complaint to the Tribunal.

8. (a) In a general meeting, a motion was proposed to remove the director representing small shareholders. A small shareholder argued that only small shareholders should be entitled to vote on this motion, as it pertains specifically to the removal of their representative, and that the motion should be passed as a special resolution. Is this argument valid? Analyze with reference to the provisions of the Companies Act, 2013.

12 Marks

- (b) The Board of Directors of HIJ Limited (HIJ), a closely held public company chose to conduct a valuation of the HIJ's assets, liabilities, goodwill, net worth, and goodwill as of March 31, 2024.

Manan Shah, the chairman of HIJ's audit committee suggested engaging a reputed registered valuer who fulfils the eligibility criteria. Nihar, a member of the audit committee is of the view that only the Board of Directors and not the audit committee is authorised to appoint a registered valuer.

To clarify, the audit committee and the Board of Directors agreed to seek your advice on the following aspects under the Companies Act, 2013:

- (i) Who can appoint the registered valuer for HIJ?
- (ii) What factors should a registered valuer consider when valuing HIJ's assets, liabilities, network?
- (iii) What are the consequences if the registered valuer does not comply with the provisions of the Companies Act, 2013 with intent to defraud HIJ or its members?
- (c) Ramana Nair applied for 10,000 equity shares in a company but did not receive any allotment. Subsequently, beyond the time prescribed under the Companies Act, 2013, company allotted 10,000 equity shares to Ramana and recorded his name in the register of members. Although

Ramana was aware of this, but did not raise any objection nor sought refund of his part payment towards 10,000 equity shares. Subsequently, liquidation proceedings were instituted against the company and Ramana was deemed liable as a contributory. Ramana

is desirous of applying to the Court for rectifying of the register of members. Will he be permitted to do so? Explain.

9. Select the correct option and give reason:

4 Marks

- (a) Under Companies Act 2013, a company may be wound up by voluntary winding up and ____.
- i. Court
 - ii. National Company Law Tribunal
 - iii. Corporate creditor
 - iv. Debt Recovery Tribunal
- (b) _____ shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.
- (A) Whole time Director
 - (B) Managing Director
 - (C) Audit Committee
 - (D) Nomination Committee
- (c) “Temporary loans” shall mean loans which are repayable:
- (A) within a year;
 - (B) on demand within six months;
 - (C) on demand or within three months
 - (D) none of the above
- (d) Section 173 (2) of the Companies Act, 2013 allows directors to attend meetings of the Board of Directors:
- (A) through video conference
 - (B) in person
 - (C) other audio visual
 - (D) any of the above
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