Paper 13 – CORPORATE LAWS AND COMPLIANCE

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Full Marks: 100 **Time Allowed: 3 Hours**

Answer Question No. 1 which is compulsory carries 20 marks and answer any 5 Question from Q. No 2 to Q. No. 8

(1) Answer all questions mentioned below [10x2=20]
Mark the correct answer and state with justification:

A. Matters not to be dealt with in a meeting through video conferencing or other audio-visual means:
- **(i) The approval of annual financial statements**
- **(ii) The approval of the Board's report**
- **(iii) The approval of the prospectus**
- **(iv) All the above**

B. Cost Records are to be maintained as per Companies Act, 2013:
- **(i) U/s 146(1)**
- **(ii) U/s 147(1)**
- **(iii) U/s 148(1)**
- **(iv) None of the above**

C. Types of penalties have been contemplated under the Companies Act, 2013 are of:
- **(i) Three types**
- **(ii) Four types**
- **(iii) Five types**
- **(iv) Six types**

D. Authorised Person under FEMA means:
- **(i) An authorised dealer**
- **(ii) Money changer**
- **(iii) Both the above**
- **(iv) None of the above**

E. 'Small Company' means a Company of which:
- **(i) Paid-up-share capital is ₹ 50 Lakhs to 5 Crores**
- **(ii) Turnover is ₹ 2Crores to 20 Crores**
- **(iv) None of the above**
- **(v) Both the above**

F. No banking company shall create any charge upon its:
- **(i) Paid up capital**
- **(ii) Unpaid capital,**
- **(iii) Only (i) above**
- **(iv) Only (ii) above**

G. Minimum Paid-up equity capital for any Health Insurance company to register in India is:
- **(i) ₹ 100 Crore**
- **(ii) ₹ 200 Crore**
- **(iii) ₹ 300 Crore**
- **(iv) ₹ 500 Crore**

H. Strategy to tackle black money under The Prevention of Money Laundering Act, 2002:
- **(i) Preventing generation of black money**
- **(ii) Effective detection, investigation & adjudication of black money**
- **(iii) Both the above**
- **(iv) None of the above**

I . 'Unfair Competition' under the Competition Act, 2002 includes
- **(i) Collusive price fixing**
- **(ii) Tie in sales**
- **(iii) Predatory & discriminatory pricing**
- **(iv) All the above**

J. SEBI specified Listing pursuant to public issue as:
(i) Minimum application size ₹ 1 million
(ii) Number of allottees shall be more than 200
(iii) Both the above
(iv) None of the above

Answer:

(1) (A) (iv) **Justification-** As provided in Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014, all the said matters are not to be dealt with in a meeting through video conferencing or other audio-visual means.

(B) (iii) **Justification-** Central Govt. has specified maintenance of Cost Records u/s 148(1) of Companies Act, 2013.

(C) (iii) **Justification-** Five types of Penalties have been contemplated under the Companies Act, 2013 of which three are compoundable and other two are not compoundable.

(D) (iii) **Justification-** 'Authorised person' u/s 2(c) has been specified under FEMA, 1999 who can deal in foreign exchange or foreign securities under section 10(1).

(E) (iv) **Justification-** As per Section 2(85) of The Companies Act, 2013, 'small company' means a company, other than a public company where both the mentioned conditions apply.

(F) (ii) **Justification-** According to Section 14 of The Banking Regulation Act, 1949, no banking company shall create any charge upon its unpaid capital, and any such charge if created, shall be invalid.

(G) (i) **Justification-** The Insurance Act, 1938, has specified u/s 6 that no insurer [other than an insurer defined u/s 2(9)(d)]shall be registered for Health Insurance after the commencement of IRDA, 1999, unless he has minimum paid up capital of ₹ 100 Crore.

(H) (iii) **Justification-** The Prevention of Money Laundering Act, 2002, has identified all of the strategies mentioned here, are to be applied for tackling back money.

(I) (iv) **Justification-** The competition Act, 2002, has specified all of the practices mentioned here, as anti-competitive practices, hence, to be treated under 'Unfair Competition'.

(J) (iii) **Justification-** As per SEBI Issue of Capital and Disclosure Requirements Regulations, 2009, both the conditions will apply for listing pursuant to public issue.

(2) (a) What do you mean by 'Small Company'? 8
(b) What is Internal Audit and who can be appointed as Internal Auditor? 8

Answer:

2. (a) According to Section 2 (85) of Companies Act, 2013 a ''small company'' means a company, other than a public company:
(1) Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees. Or

(2) Turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.

Provided that nothing in this clause shall apply to:
(i) Holding company or a subsidiary company.
(ii) A company registered under Section 8, or
(iii) A company or body corporate governed by any special Act

Some of the advantages enjoyed by the small companies are:
(i) Holding of two board meetings instead of four – one each in the first and second half years and the gap between the two meeting should not be more than 90 days. (section 173(5))
(ii) Not required to give cash flow statements with the financial statements (section 2(40)

(b) There was no provision under the Companies Act, 1956 for Internal Audit. Section 138 of the Companies Act, 2013 came into force from 1st April, 2014 which provides for it. According to Section 138 of the Companies Act, 2013 and the Companies (Accounts) Rules, 2014:

Companies required to appoint Internal Auditor
(1) The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate [As amended vide notification no. G.S.R. 742(E) dated 27th July, 2016], namely:
  (a) every listed company.
  (b) every unlisted public company having:
    (i) paid up share capital of ₹ 50 crore or more during the preceding financial year, or
    (ii) turnover of ₹ 200 crore or more during the preceding financial year, or
    (iii) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crores or more at any point of time during the preceding financial year, or
    (iv) outstanding deposits of ₹ 25 crore or more at any point of time during the preceding financial year, and
  (c) every private company having:
    (i) turnover of ₹ 200 crore or more during the preceding financial year, or
    (ii) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore or more at any point of time during the preceding financial year.
(2) The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

Following persons can be appointed as Internal Auditor:
(a) Internal Auditor shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. Here, the term Chartered Accountant shall mean a Chartered Accountant whether engaged in practice or not.
(b) The internal auditor may or may not be an employee of the company.

(3) (a) What matters are to be stated in the Director's Responsibility Statement? 10
(b) XYZ Company Ltd in its Annual General Meeting appointed all its directors by passing one single resolution. No objection was made to the resolution. Examine the validity

of the appointment of directors explaining the relevant provisions of the companies act' 2013. Will it make any difference, if XYZ Company was a private company? 6

Answer:

3. (a) Director's Responsibility Statement [Section 134(5)]

The Directors' Responsibility Statement shall state that:

(i) In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures.

(ii) The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period.

(iii) The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities.

(iv) The directors had prepared the annual accounts on a going concern basis, and

(v) The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.

(v) The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

(b) Under section 162(1) of the Companies Act, 2013, at a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.
From the above provision of law, it is mandatory for the company to first get a unanimous approval of the company on the appointment or more than one director by a single resolution. In the given case, no such motion was put to vote at the meeting and passed unanimously. Merely not raising any objection is not the same as active unanimous approval.
Further, according to section 162(2), a resolution moved in contravention of sub-section (1) shall be void, whether or not any objection was taken when it was moved. Hence, in the given case the appointment of all the directors made by a single resolution at the AGM is void.
The Ministry of Corporate Affairs has clarified via Notifications No, 464(E) dated 5th June, 2015, that section 162 of the Companies Act, 2013, shall not apply to a private company, Thus, if XYZ would have been a private company, then provisions of section 162 shall not be attracted.

(4) (a) State the Scheme of revival and rehabilitation under Section 261 of the Companies Act, 2013 8

(b) 60% of the shares of Indo-French Ltd are held by the French group and balance by the Indian group. As per the articles of the company, both the groups had equal managerial powers. The relation between the two groups soured and the operations of the company reached deadlock. The Indian group approached Company Law Board for action against the French group for oppression as stated on Sec-397 of the Companies Act'1956. Based on the above facts decide the following issues

(i) Whether the contention of oppression against the French group by the Indian group is tenable?

(ii) What are the powers of CLB in this regard 4+4=8

Answer:

4. (a) Section 261 of the Companies Act, 2013 contains the provisions as to preparation of Scheme of revival and rehabilitation. According this Section: 8

(1) The company administrator shall prepare or cause to be prepared a scheme of revival and rehabilitation of the sick company after considering the draft scheme filed along with the application under Section 254

(2) A scheme prepared in relation to any sick company under Sub-Section (1) may provide for any one or more of the following measures, namely:

(a) the financial reconstruction of the sick company.

(b) the proper management of the sick company by any change in, or by taking over, the management of such company.

(c) the amalgamation of :

(i) the sick company with any other company. or

(ii) any other company with the sick company.

(d) takeover of the sick company by a solvent company.

(e) the sale or lease of a part or whole of any asset or business of the sick company.

(f) the rationalization of managerial personnel, supervisory staff and workmen in accordance with law.

(g) such other preventive, ameliorative and remedial measures as may be appropriate.

(h) repayment or rescheduling or restructuring of the debts or obligations of the sick company to any of its creditors or class of creditors.

(i) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (h).

(b) (i) Section 397 of the Companies Act, 1956 deals with the remedy in a situation when the affairs of the company are being conducted in a manner oppressive to a shareholder or shareholders. This means that some of the shareholders must be in such a position that they can be oppressed by other shareholders or the management.

In the present case as given in the question, both the Indian Group and the French Group of Indo-French Ltd. are equally strong and none is able to oppress the other. The situation stated in the question is a deadlock but it cannot be termed as oppression. Since it is not a case of winding up of the company, the relief under the said section 397 is not available to the Indian Group. [Gnanasambandam v. Tamilnad Transporters (Coimbators) p. Ltd.] In view of the position discussed, the contention of the Indian Group is not tenable.

(ii) The powers of the CLB under the provisions of section 397 of the Companies Act, 1956 are discretionary in character. Apart from the general powers envisaged therein, the CLB under section 402(b) of the said Act, may order the purchase of

the shares of one group by the other group. In the case of Yashovardhan Saboo Vs. Groz Beckert Saboo Ltd., the presiding officer ordered the foreign group to buy out the shares of the minority group at the fair price with deadlock and the matters are not sorted out by any other means, an order for winding up of the company may also be made under the just and equitable clause, [Kishan Kumar Ahuja Vs. Suresh Kumar Ahuja]. Thus, if the Indian Group or the French Group fails to buy out the shares of the other group, an order for winding up of the company may be made under the just and equitable clause.

(5) (a) State the Procedure and Powers of the Securities Appellate Tribunal of The SEBI Act,1992 10

(b) What constitutes Competition Law and Policy? 6

Answer:

5. (a) The powers and procedures of the Securities Appellate Tribunal have been given under Section 15U. The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules. The Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings. The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath.
(b) requiring the discovery and production of documents.
(c) receiving evidence on affidavits.
(d) issuing commissions for the examination of witnesses or documents.
(e) reviewing its decisions.
(f) dismissing an application for default or deciding it ex parte.
(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte.
(h) any other matter which may be prescribed.

Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code (45 of 1860) and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

The appellant in the Securities Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by an court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(b) Competition law and policy is defined as those Government measures that affect the behaviour of enterprises and structure of the industry with a view to promote efficiency and maximize welfare.

The two elements of such Government measures are:
Competition Policy: Set of policies, such as liberalized trade policy, relaxed FDI policy, de-regulation, etc., that enhances competition in the markets.
Competition Law: To prevent anti-competitive practices with minimal intervention.

(6) (a) State the difference between the title, FERA and FEMA of legislations 6
(b) State the 'Insurable Interest' under The Insurance Act, 1938 10

Answer:

6. (a) The difference between the title, FERA and FEMA of legislations is that, in view of the stated change, the title of the legislation has rightly been changed from 'Foreign Exchange Regulation Act' to 'Foreign Exchange Management Act'. The main change that has been brought is that FEMA is a civil law, whereas the FERA was a criminal law. In simple word, for contravention of provisions under the FEMA arrest and imprisonment would not be resorted whereas it was the norm under the previous act. Drastic tenor of FERA can be gauged from the fact that it provided for imprisonment for violation of even very minor offenses. In FERA, the presumption was upon the accused to defend himself as he was deemed guilty, whereas in FEMA, the onus is upon the Enforcement Directorate to prove the guilt of the accused.

(b) To constitute insurable interest, it must be an interest such that the risk would by its proximate effect cause damage to the assured, that is to say, cause him to lose a benefit or incur a liability. The validity of an insurance contract, in India, is dependent on the existence of an insurable interest in the subject matter. The person seeking an insurance policy must establish some kind of interest in the life or property to be insured, in the absence of which, the insurance policy would amount to a wager and consequently void in nature. The test for determining if there is an insurable interest is whether the insured will in case of damage to the life or property being insured, suffer pecuniary loss [New India Insurance Company Ltd. v. G.N. Sainani, (1997) 6 SCC 383]. A person having a limited interest can also insure such interest.

Insurable interest varies depending on the nature of the insurance. The controversy as to the existence of an insurable interest between spouses was settled by the court, which held that such an interest could exist as neither was likely to indulge in any 'mischievous game'. The same analogy may be extended to parents and children. Further, the courts have also held that such an insurable interest would exist for a creditor (in a debtor) and for an employee (in an employer) to the extent of the debt incurred and the remuneration due, respectively.

The existence of insurable interest at the time of happening of the event is another important consideration. In case of life and personal accident insurance it is sufficient if the insurable interest is present at the time of taking the policy. However, in the case of fire and motor accident insurance the insurable interest has to be present both at the time of taking the policy and at the time of the accident. The case is completely different with marine insurance wherein there need not be any insurable interest at the time of taking the policy.

(7) (a) What do you mean by XBRL? 8
(b) State the impact of Clause 49 on IT Governance 8

Answer:

7. (a) XBRL is a language for the electronic communication of business and financial data which is revolutionizing business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data. XBRL stands for extensible Business Reporting Language. It is already being put to practical use in a number of countries and implementations of XBRL are growing rapidly around the world. XBRL is an open, royalty-free software specification developed through a process of collaboration between accountants and technologists from all over the world. Together, they formed XBRL International which is now made up of over 650 members, which includes global companies, accounting, technology, government and financial services bodies. XBRL is and will remain an open specification based on XML that is being incorporated into many accounting and analytical software tools and applications.

(b) Impact of Clause 49 on IT Governance - Most Indian corporate entities have witnessed a heavy penetration of IT in the running of business processes. Corporate majors have gone in for massive state-of-the-art enterprise resource planning (ERP) implementations across their geographically dispersed business locations, reaping in the bargain online recording of transactions and availability of information at the click of the mouse. Major ERP vendors have come out with India-specific versions to service their expanding Indian clientele. Adding momentum to this development is the increasing offshore (and often intercontinental) acquisitions of business units by most of the top business houses over the last year, in services and manufacturing verticals. The cumulative impact of all these developments boils down that the road to corporate governance definitely lies through achieving IT governance. Many of the Indian corporate entities have started recognizing the importance of having a Chief Information Officer (CIO) working independently and reporting directly to the board of directors, in place of the traditional reporting structure of working under and reporting to the CFO. This has lent a sense of urgency to giving the IT function its rightful place in the management scheme of things.

(8) Write short notes on: (4 Questions are to be answered) (4x4=16)

(i) Effect of floating charge
(ii) Central Registry under SARFAESI Act, 2002
(iii) Controller of Insurance
(iv) Mediation & Conciliation
(v) Indemnity and Subrogation in Insurance

Answer:

8. (a) Effect of Floating Charge - As per Section 332 of The Companies Act, 2013, when a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except for the amount of any cash paid to the company at the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent per annum or such other rate as may be notified by the Central Government in this behalf.

(b) Central Registry under SARFAESI Act, 2002- Under Section 20 of The Securitization And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002, the

Central Government is empowered to set up by notification a registry to know as Central Registry with its own seal for the purpose of registration of transactions of securitisation and reconstruction of financial assets and creation of security interest under this Act. The head office and the branches of the central registry shall be at such places as the Central Government may specify. The territorial limits with in which the registry can exercise its functions shall be specified by the Central Government. The Central Government will appoint a person called the Central Registrar who will exercise the powers granted to the Central Registry. Also the Central Government shall appoint other officials who shall discharge their functions under the directions of the Central Registrar.

(c) Controller of Insurance- means the officer appointed by the Central Government under section 2B to exercise all the powers, discharge the functions and perform the duties of the Authority under this Act or the Life Insurance Corporation Act, 1956 (31 of 1956) or the General Insurance Business (Nationalisation) Act 1972 (57 of 1972) or the Insurance Regulatory and Development Authority Act 1999.

(d) Mediation & Conciliation - Section 442 of the Companies Act, 2013 provides for maintenance of Mediation and Conciliation Panel. It states that the Central government shall maintain a panel of experts for mediation between the parties. Such panel may to be called Mediation and Conciliation Panel. The parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under the Act may resort to mediation under these provisions. After receiving application for referring the matter to Mediation and Conciliation Panel, the Central Government or Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from such Panel. The matter is required to be disposed off within a period of three months from the date of such reference. The Panel is required to forward its recommendations to the Central Government or Tribunal or the Appellate Tribunal, as the case may be, within that period. The aggrieved party may file its objections to the Central Government or Tribunal or the Appellate Tribunal, as the case may be. The Central Government or Tribunal or the Appellate Tribunal, may, *suo motu*, refer any matter pertaining to such proceedings to experts from the Panel.

(e) Indemnity and Subrogation in Insurance -Most kinds of insurance policies other than life and personal accident insurance are contracts of indemnity whereby the insurer undertakes to indemnify the insured for the actual loss suffered by him as a result of the occurring of the event insured against. Even within the maximum limit, the insured cannot recover more than what he establishes to be his actual loss [Vania Silk Mills (P) Ltd. v. CIT (1991) 4 SCC 22]. A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the insured to the extent agreed upon.

Although the insured is to be placed in the same position as if the loss has not occurred, the amount of indemnity may be limited by certain conditions:
(a) Injury or loss sustained by the insured has to be proved.
(b) The indemnity is limited to the amount specified in the policy.
(c) The insured is indemnified only for the proximate causes.
(d) The market value of the property determines the amount of indemnity.

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