Mock Test Paper - Series I: April, 2024

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INTERMEDIATE COURSE: GROUP – I

PAPER – 2: CORPORATE AND OTHER LAWS

ANSWER TO PART – I CASE SCENARIO BASED MCQS

1. (c)

2. (b)

3. (c)

4. (b)

5. (a)

6. (d)

7. (c)

8. (c)

9. (b)

10. (b)

11. (b)

12. (b)

13. (c)

14. (b)

15. (c)

ANSWERS OF PART – II DESCRIPTIVE QUESTIONS

1. (a) **(i)** Section 1 of the Companies Act, 2013, provides that the provisions of this Act shall apply to companies incorporated under this Act or under any previous company law. Hence, the provisions of the Companies Act, 2013 are also applicable on Cross Limited.

(ii) According to section 2(71) of the Companies Act, 2013, public company means a company which is not a private company.

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

According to section 2(87) of the Companies Act, 2013, "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company:

(1) controls the composition of the Board of Directors; or

(2) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the given question, total voting power in XYZ Private Limited is:

Particulars	Amount in ₹
Convertible Preference Shares (carrying voting rights)	1,00,00,000
Equity Shares	1,00,00,000
Total Voting Power	2,00,00,000

Cross Limited holds more than one- half of the total voting power [(₹ 10,00,000 equity shares+ ₹ 1,00,00,000 preference shares)/ ₹ 2,00,00,000]. Therefore, XYZ Private Limited is a subsidiary of Cross Limited.

Further, in terms of the provisions of section 2(71), XYZ Private Limited being subsidiary of Cross Limited (a public company), shall also be deemed to be a public company.

(b) According to section 135(1) of the Companies Act, 2013, every company net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

Further, according to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Also, according to sub-section 9, where the amount to be spent by a company under sub-section 5 does not exceed fifty lakh rupees, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

Here, the “Net Profit” shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

In the instant case,

1. Net Profit before tax of HelpIndia Limited for the FY 2023- 24 is ₹ 10 crore, hence, HelpIndia Limited is required to constitute a CSR committee during FY 2024- 25 as the Net profit before tax for the FY exceeds ₹ 5 crore.

2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (HelpIndia Limited was incorporated on 1st April 2022.)

Average Net Profit since incorporation: (₹ 11 crore + ₹ 10 crore)/ 2 = ₹ 10.5 crore

Minimum contribution towards CSR will be: 2% of ₹ 10.5 crore = ₹ 0.21 crore or ₹ 21 lakh.

In the given question, since the amount to be spent by HelpIndia Limited is not exceeding ₹ 50 lakh, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

(c) Section 5 of the Foreign Exchange Management Act, 1999 provides that any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. The Central Government in consultation can, in public interest and in consultation with Reserve Bank of India, impose reasonable restrictions for such transactions.

Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 provides that no person shall draw foreign exchange for a transaction without approval of the Central Government. One of the transaction included in Schedule II is remittance of prize money/ sponsorship of sports activity abroad by a person other than International/ National/ State level sports bodies, if the amount involved exceeds USD 100,000.

Accordingly, Rohan Sharma Cricket Academy can withdraw foreign exchange of USD 100,000 as participation fee after obtaining permission from Ministry of Human Resource Development (Department of Youth Affairs and Sports) as prescribed in Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

2. (a) (i) Abridged Form of Annual Return

In terms of Second Proviso to Section 91(1) of the Companies Act, 2013, the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed.

As per Rule 11 (1) One Person Company and small company shall file the annual return in Form No. MGT-7A.

(ii) Signing of Annual Return

The annual return shall be signed by a director of the company and the company secretary; and in case, there is no company secretary, by a company secretary in practice.

In relation to One Person Company, small company and private company (if such private company is a start-up), the annual return

shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

(b) According to section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of:

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

(i) it is authorised by its Articles;

(ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;

(vi) it complies with conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend.

For the issue of bonus shares APR Limited will require reserves of ₹ 50,00,000 (i.e. half of ₹ 1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

(c) (i) Movable Property

According to section 3(36) of the General Clauses Act, 1897**,** 'Movable Property' shall mean property of every description, except immovable property.

Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property.

(ii) Oath

According to section 3(37) of the General Clauses Act, 1897, 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

3. (a) As per section 8 of the Companies Act, 2013, the Central Government (ROC in its behalf) may grant a licence (to operate as a non profit organisation) if it is proved to the satisfaction that a person or an association of persons proposed to be registered under the Companies Act, 2013, as a limited company:

- has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- intends to apply its profits (if any) or other income in promoting its objects; and
- intends to prohibit payment of any dividend to its members.

(b) According to Rule 2(1)(c)(x) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit, is not considered as deposit.

In the above case, the amount of ₹ 4,00,000 received by Wood Limited from Mr. Cotton under the contract of employment with the company being non-interest bearing security deposit, will be considered as deposit in terms of sub-clause (x), since the amount is more than his annual salary of ₹ 3,85,000.

(c) Read the Statute as a Whole:

It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions– if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.

4. (a) Periodical Financial Results [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed:

(a) to prepare the financial results of the company on periodical basis and in prescribed form

(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and

(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Therefore, the objection of the Board of Directors on the ground that as Crystal Limited is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

(b) According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership (LLP) shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

Provided, if in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

In the given question, at least Mr. Prateek and one nominee of any bodies corporate shall be designated partners.

(c) Heading and Title of a Chapter

If we glance through any Act, we would generally find that a number of its sections referring to a particular subject are grouped together, sometimes in the form of chapters, prefixed by headings and/or Titles. These Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts.

The headings of different portions of a Statute can be referred to determine the sense of any doubtful expression in a section ranged under any particular heading.

They cannot control the plain meaning of the words of the enactment though, they may, in some cases be looked at in the light of preamble if there is any ambiguity in the meaning of the sections on which they can throw light.

It may be noted that headings may sometimes be referred to know the scope of a section in the same way as the preamble. But a heading cannot control or override a section.

5. (a) Circumstances in which LLP may be wound up by Tribunal [Section 64 of the Limited Liability Partnership Act, 2008]

A LLP may be wound up by the Tribunal:

(1) if the LLP decides that LLP be wound up by the Tribunal**;**

(2) if, for a period of more than six months, the number of partners of the LLP is reduced below two;

(3) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;

(4) if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or

(5) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

(b) According to the Companies (Accounts) Rules, 2014, every unlisted public company having:

(A) paid up share capital of ₹ 50 crore rupees or more during the preceding financial year; or

(B) turnover of ₹ 200 crore rupees or more during the preceding financial year; or

(C) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore rupees or more at any point of time during the preceding financial year; or

(D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year;

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

In the given question, Kesar Limited has outstanding loan from bank exceeding 100 crore rupees i.e., ₹ 102 crore on 3rd March 2024 (i.e. during the preceding financial year 2023-24). Hence, it is required to appoint Internal Auditor during the year 2024-25.

(c) As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

In the given instance, Sheesham Limited declared dividend for its shareholder in its Annual General Meeting held on 8th August 2023. Under the provisions of section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 9th August 2023 to 7th September 2023. In this series of 30 days, 8th August 2023 will be excluded and last 30th day, i.e. 7th September 2023 will be included. Accordingly, Sheesham Limited

will be required to pay dividend within the time frame of 9th August 2023 and 7th September 2023 (both days inclusive).

6. (a) Inspection of Register of Charges and Instrument of Charges

As regards inspection, section 85 (2) of the Companies Act, 2013, states that the register of charges and the instrument of charges shall be open for inspection during business hours:

(1) by any member or creditor without any payment of fees; or

(2) by any other person on payment of prescribed fees. subject to such reasonable restrictions as the company may, by its articles, impose.

OR

(a) (i) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting–

- ♦ is or could reasonably be regarded as defamatory of any person; or
- ♦ is irrelevant or immaterial to the proceedings; or
- ♦ is detrimental to the interests of the company.

(ii) Maximum time allowed for entering minutes of proceedings: The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within 30 days of the conclusion of the meeting.

(b) According to section 389 of the Companies Act, 2013:

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India;

- ✓ a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar; and
- ✓ the prospectus states on the face of it that a copy has been so delivered, and
- ✓ there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, the following documents shall be annexed to the prospectus, namely:

(1) any consent to the issue of the prospectus required from any person as an expert;

(2) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;

(3) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years;

(4) a copy of underwriting agreement; and

(5) a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

(c) Section 5 of the Foreign Exchange Management Act, 1999 provides that any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. The Central Government in consultation can, in public interest and in consultation with Reserve Bank of India, impose reasonable restrictions for such transactions.

Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 provides that no person shall draw foreign exchange for a transaction without approval of the Central Government. One of the transaction included in Schedule II is 'cultural tours'.

Accordingly, Ms. Kanika Tripathi can withdraw foreign exchange of USD 75,000 for meeting expenses of cultural tour after obtaining permission from Ministry of Human Resource Development (Department of Education and Culture) as prescribed in Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.