



CA FINAL

Subject : Corporate & Economic Laws
Test Code – FNJ 7411

(Marks - 100)

DIVISION A (Descriptive)

Question No. 1 is compulsory and attempt any four out of remaining five questions.

QUESTION NO.1

A. You are the CFO and in charge of legal compliances of a large multi national company in India. The Board of Directors of the company are broad based and comprise of competent directors who are Indian as well as foreign nationals. Mr. 'X', who is a director (Business Development) on the Board is very often on business tour board. He approached you and wants to know from you the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors. Analyse the following situations and advise suitably, Mr. X referring to the provisions of the Companies Act, 2013.

1. To how many directors can a person be appointed as an alternate director and how many votes does he have in one Board Meeting?
2. If the original director joins the Board Meeting through video conferencing without returning to India, then can the alternate director appointed in his place attend the same board meeting? If yes, whose presence and vote will be counted?
3. In case of a private company, where an alternate director is appointed in place of a non-executive director whose term is indefinite then, what will be the tenure of such alternate director, provided the original director does not return to India for a longer period say 3-4 years?
4. Can an Executive Director/Whole Time Director/Managing Director appoint alternate directors?

(8 MARKS)

B. Determine the legal positions in the given situations:

- i. Excel Ltd. committed an offence under the Companies Act, 2013. The offence falls within the jurisdiction of a special court of Bundi district in which the registered office of Excel Ltd was situated. However in that Bundi district, there were two special courts one in X place and other in Y place. Identify the jurisdiction of the special court for trial of an offences committed by Excel Ltd.
- ii. As per provisions of the Companies Act, 2013, what is the status of XYZ Ltd., a Company incorporated in London, U.K., which has a share transfer office at Mumbai?

(6 MARKS)

QUESTION NO.2

A. The issued and paid up capital of MNC Limited is Rs. 5 crores consisting of 5,00,000 equity shares of Rs. 100 each. The said company has 500 members. A petition was submitted before the Tribunal signed by 80 members holding 10,000 equity shares of the company for the purpose of relief against oppression and mismanagement by the majority shareholders. Examining the provisions of the Companies Act, 2013, decide whether the said petition is maintainable. Also explain the impact on the maintainability of the above petition, if subsequently 40 members, who had signed the petition, withdrew their consent. **(4 MARKS)**

B. At the meeting of the members of M/s QRS Limited, a scheme of compromise and arrangement was approved by requisite majority. The National Company Law Tribunal (NCLT) after complying the provisions, issued an order, approving the scheme of compromise and arrangement.

List out the matters to be provided in the order issued by NCLT under Section 230(7) of the Companies Act, 2013?

When shall the order be filed with ROC?

(4 MARKS)

C. Apex Limited failed to repay the amount borrowed from the bankers, ACE Bank Limited, which is holding a charge on all the assets of the company. The Bank took over management of the company in accordance with the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The company is managed by a Managing Director, Mr. X. Referring to the provisions of the said Act, examine whether Mr. X is entitled to compensation for loss of office and also explain the effect of such takeover on certain rights of the shareholders of the company.

(6 MARKS)

QUESTION NO.3

A. One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors whereby power was conferred upon them to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members') decisions.

Examining the provisions of the Companies Act, 2013, answer the following:

Whether the contention of members against the non-compliance of members' decision by the directors is tenable?

Whether it is possible for the members usurp the powers which by the Articles are vested in the directors by passing a resolution in the general meeting?

(8 MARKS)

- B. Mr. X was found to be guilty of offence of money-laundering by being involved in an activity connected with proceeds of crime. Adjudicating Authority(AA) as per findings confirmed the attachment of the property and ordered for the investigation. The investigation was initiated by the AA on 1st February, 2019. The attachment of the property of Mr. X was still to be continued by 31st January 2020. Enumerate in the given situation the validity of the attachment period. **(6 MARKS)**

QUESTION NO.4

- A. 'X' Stock exchange Limited was granted recognition by Securities and Exchange Board of India (SEBI) . The stock brokers of the stock exchange did not pay much heed to the concept of governance and focused on increasing their wealth and snubbed the protection of investors. their activities were against the interest of the trade and general public. **(4 MARKS)**
- i. Examine whether the Central Government/SEBI has the power to withdraw the recognition granted to 'X' Stock Exchange Limited under the provisions of Securities Contracts (Regulations) Act, 1956?
- ii. Whether a person can be a member of an unrecognised stock exchange for the purpose of performing any contracts in Securities?
- B. Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of LR Ltd., a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry. **(4 MARKS)**
- C. X, is an association having registration to transfer the Foreign Contribution received by it to another organization? Is the valid act of X? If yes, then what is the process to do so? Is there any restriction on transfer of funds to other organisations? **(6 MARKS)**

QUESTION NO.5

- A. Draft a Board Resolution of disclosure of interest by Mr. J, director of ABC Ltd. in a proposed contract to be entered into with M/s APL & Co. in which, such director is a partner. **(4 MARKS)**
- B. The Articles of Association of a listed company have fixed payment of sitting fee for each Meeting of Directors subject to a maximum of Rs. 30,000. In view of the increased responsibilities of the independent directors of listed companies, the company proposes to increase the sitting fee to Rs. 45,000 per meeting. Advise the company about the requirement under the Companies Act, 2013 to give effect to this proposal. **(4 MARKS)**
- C. Mr. Mediator was proposed to be appointed as a resolution professional for the corporate insolvency resolution process initiated against BMR Ltd. Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. Mediator is partner. In the light of the given facts, examine the nature of the proposal of the appointment of Mr. Mediator for the conduct of the CIRP as per the Insolvency and Bankruptcy Code, 2016. **(6 MARKS)**

QUESTION NO.6

- A. Shareholders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 share holders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture.

With reference to the provisions of the Companies Act, 2013, mention whether the shareholders' application will be accepted? Elaborate. **(4 MARKS)**

- B. Rudraksh Ltd., a public company, was incorporated for supply of solar panels for the emerging project of government for construction of highways. However, the said project did not turn up for two years due to some legal implications. During the said period, no any significant accounting transaction was made and so the company did not file financial statements and annual returns during the last two financial years. In the meantime, the Board proposed for Mr. Ram & Mr. Rahim to be appointed as an Independent Directors for their independent and expertise knowledge and experience for better working and improvement of financial position of the company.

Evaluate in the light of the given facts, the following legal position :

- i. Comment upon the accountability for non – filing of financial statements and annual returns for last two financial years of the Rudraksh Ltd.
- ii. Nature of the proposal for an appointment of Mr. Ram & Mr. Rahim in the Rudraksh Ltd. for improvement of the company.

(4 MARKS)

- C. Mr. R, the respondent had placed an order of purchase of various quantities of phosphoric acid from the Mr. P, the petitioner. The purchase order noted that the terms and conditions were to be as per the Fertilizer Association of India (FAI). Terms and Conditions for Sale and Purchase of Phosphoric Acid were as per Clause 15 of the FAI which also provided terms for settlement of disputes by arbitration. Enumerate in the light of the given circumstances as to existence of a valid arbitration agreement between the parties as per the Arbitration and Conciliation Act, 1996.

(3 MARKS)

- D. Enumerate the given situations in the light of the term defined as Current Account Transaction under FEMA.

1. An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months.
2. An Indian resident transfers US\$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian bank account to the NRI brother's bank account in New York.

(3 MARKS)

Additional 14 marks questions in option to question number 2 to 6

AQ1 State the list of assets which are included and excluded in liquidation estate.

(6 Marks)

AQ2 State the eligibility to become Registered Valuer along with qualifications and experience.

(8 Marks)

DIVISION B (MCQs)

All MCQs are Compulsory

Integrated Case Scenario 1 (8 Marks)

Narmada Limited (The Company) is incorporated as a Private Limited Company under the provision of Companies Act, 1956 with the Registrar of Companies, Gwalior, Madhya Pradesh. The company is having its registered office at Plot No.1, First Floor, West Chamber, Gwalior, Madhya Pradesh. Authorized share capital of the Company is Rs. 5, 00,000/-. The Issued, subscribed and paid up share capital of the Company is Rs. 5,00,000/-. The main objects of the company are construction of building and housing and also educational.

A notice of struck off has been received from Registrar of Companies, Gwalior, Madhya Pradesh by the Narmada Limited. Registrar of Companies, Gwalior, Madhya Pradesh issued a notice on company for non-compliance of provisions of the Companies Act, 2013 in respect of filing of Annual Returns and Financial Statements for years 2014-15 to 2017-18 and subsequently the name of the company was struck off under Companies Act, 2013 read with Rule 7 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. Aggrieved by the order of Registrar of Companies, Gwalior, Madhya Pradesh, Narmada Limited filed an appeal before National Company Law Tribunal (NCLT), Gwalior under Section 252 of the Companies Act, 2013 and submitted that the company was in operation and the business activities were carried out by the company during the period of striking off but the reporting of such activities through Annual Returns and Financial Statement had not been filed with Registrar of Companies due to inadvertence on part of the management

You are a Practicing Company Secretary and the Company has hired you as a Consultant to advise Narmada Limited on the following, considering the above facts:

1. In the above situation Name of Narmada limited has been struck off by ROC under which section?
 - (a) Section 248(1)
 - (b) Section 248(2)
 - (c) Section 249
 - (d) Section 252
2. What is the time limit within which Narmada Limited can file an appeal to NCLT under section 252(1)?
 - (a) within a period of 2 years from the date of such order
 - (b) within a period of 3 years from the date of Incorporation
 - (c) within a period of 3 years from the date of such order
 - (d) within a period of 2 years from the date of Incorporation

3. What are the grounds on which Registrar of Companies cannot remove the name of a company from Registrar of Companies?
- (a) company has failed to commence its business within 1 year of its incorporation
 - (b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A;
 - (c) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.
 - (d) Company Has not appointed First Director within 180 days
4. If a company files an application with the Registrar under section 248 for the purpose of removal of name of the company from the register of companies, but such application is in contravention of section 249, then the company shall be punishable with fine which may extend upto
- (a) Rs. 50,000
 - (b) Rs. 1 lac
 - (c) Rs. 2 lacs
 - (d) Rs. 5lacs

Integrated Case Scenario 2 (8 Marks)

A Corporate Debtor defaulted in the payment to the Operational Creditor, Safe Bank, a foreign bank, amounting to INR 1,000 crore. A certificate was also furnished by the Safe Bank with regards to the non-payment of the outstanding amount by the Corporate Debtor and repeated reminders as to the payment of the debt were made, but such communications could not influence the Debtor to make the payment, pursuant to which a Statutory Notice was sent by the Operational Creditor under the Companies Act. The Corporate Debtor has replied to such notice and disputed the existence of any such outstanding debt on the part of the Debtor. After, the Insolvency and Bankruptcy Code (the Code) was enacted in 2016, the Operational Creditor furnished a Demand Notice to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor replied to the notice and disputed saying that there existed no outstanding default on its part and simultaneously, also questioned the validity of the Purchase Agreement.

Aggrieved by the action of the Corporate Debtor, the Operational Creditor approached the National Company Law Tribunal (NCLT) and applied for the initiation of the Corporate Insolvency Resolution Process. NCLT rejected the application for initiation of Corporate Insolvency Resolution Process. Operational Creditor aggrieved by the decision of NCLT, preferred an appeal to the National Company Law Tribunal (NCLAT), which also upheld the decision of NCLT.

Subsequently, the Operational Creditor approached the Supreme Court for the redressal of its grievance.

In this backdrop, answer the following questions:

1. Give reasons for the rejection of the application for the initiation of the Corporate Insolvency Resolution Process by NCLT and NCLAT citing applicable provisions of the Code.

- (a) The Amount of debt is below prescribed limit under Insolvency Bankruptcy Code to initiate CIRP
 - (b) The Proceeding is already pending under Companies Act and hence cannot be initiated under IBC
 - (c) As the claim is disputed by Operational Creditor, hence application cannot be filed by Corporate Debtor
 - (d) None of the Above
2. When can CIRP be initiated under IBC
- (a) The minimum amount of default is Rupees Five Lakh or such higher amount which shall not exceed Rupees Two Crore.
 - (b) The minimum amount of default is **Rupees One Crore.**
 - (c) The minimum amount of default is Rupees Ten Lakh or such higher amount which shall not exceed Rupees Three Crore.
 - (d) The minimum amount of default is Rupees Eight Lakh or such higher amount which shall not exceed Rupees Three Crore.
3. In the above situation whether safe bank can assign or legally transfer its debt to a financial creditor:
- (a) Yes. However, the transferee shall be considered as an operational creditor to such extent of transfer.
 - (b) Yes but the transferee shall be considered as a financial creditor in relation to such transfer.
 - (c) No. An operational creditor cannot assign or legally transfer any operational debt to a financial creditor.
 - (d) No. An operational creditor can assign or legally transfer an operational debt only to an operational creditor.
4. Which of the following activities shall not be prohibited or terminated during the moratorium period:
- (a) Transferring, encumbering, alienating or disposing of any assets by the corporate debtor.
 - (b) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
 - (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor.
 - (d) Making sales in the ordinary course of business or rendering services therein

Multiple choice questions (Total 14 marks)

1. Mr. George, director of ABC Ltd. absents himself for a period of 13 months with notice. Hence the Company decides on appointing an Alternate Director. However, Legal advisor of the Company is of the opinion that an Alternate Director cannot be appointed hence the position can be filled in by a Casual Vacancy Director. Is the contention of the Legal Advisor correct?

- (a) Yes, a Casual vacancy director can be appointed. Since its over 12 months and George has attracted disqualification
- (b) No, since the director has given notice of absence and hence Alternate Director can be appointed.
- (c) Alternate director as well as original director can be appointed simultaneously
- (d) None of the above

(2 Marks)

2. A Nomination and Remuneration Committee has 4 member Directors including the Chairperson of BOD. All of whom are non-executive and 2 are Independent Directors. Whether there is compliance of the act?

- (a) Yes, there is compliance of the act
- (b) No, as all directors should be Independent Directors,
- (c) No, as the number of non-executive Directors shall be 3
- (d) No, as the number of member Directors in NRC should be 6 directors

(1 Marks)

3. What is the punishment to the director or officer of the company if they disobey the direction issued by the Registrar under section 207?

- (a) Imprisonment upto 1 year
- (b) Fine, which shall not be less than ` 25000 but which may extend to Rs 100000
- (c) (a) and (b)
- (d) (a) or (b)

(1 Marks)

4. ABC Ltd, incorporated outside India, having place of business in India and 42 % of its Paid up capital is held by Indian Body Corporate. State the type of company.

- (a) Indian Company,
- (b) Foreign company,
- (c) Deemed Indian Company,
- (d) None of the above

(1 Marks)

5. Mr. Somnath is appointed as a director of a Government Company. He did not file his consent to act as director under DIR2 after appointment. Examine with the provisions of the Companies Act if he is legally liable considering the contravention.

- (a) Should file consent within 30 days of appointment.
- (b) Director of Government Company is exempted from filing consent with the ROC.
- (c) Company and Officer in default shall be punishable with fine upto Rs. 5, 00,000.
- (d) None of the above

(1 Marks)

6. Lovely Ltd after discharging all its liabilities wanted to make an application to Registrar for removal of its name and for the same they came up with the below proposal, Suggest the correct proposal to the company

- (a) Company needs to take consent of 51% members in terms of Subscribed share capital
- (b) Company needs to take consent of 75% members in terms of Subscribed share capital
- (c) Company needs to take consent of 75% members in terms of paid up share capital
- (d) None of the above

(1 Marks)

7. The Registrar believes that the books and papers of Sundaram Company are likely to be destroyed by the company on complaint received by him. The Registrar entered and searched the premises of Sundaram company after obtaining an order from the Special Court. The Registrar seized the books and papers as he considered necessary on 4 August 2019. On 9 February 2020, the Sundaram company asked the Registrar to return them the books of account back. But the Registrar refused to do so. Advice.

- (a) The Registrar shall return seized books of account within 90 days of such seizure
- (b) The Registrar shall return seized books of account within 60 days of such seizure
- (c) The Registrar shall return seized books of account within 180 days of such seizure
- (d) The Registrar shall return seized books of account within 45 days of such seizure

(2 Marks)

8. X Ltd. is a Australian company having manufacturing units in 4 countries. It is having it's headquarter in Pune and Branch in Beijing. Headquarter at Pune controls branch of Beijing unit. What would be the residential status of manufacturing unit of Beijing?

- (a) Beijing Branch is 'Person resident in India'
- (b) Beijing Branch is 'Person resident outside India'
- (c) Beijing Branch is Foreign unit
- (d) Beijing branch is ordinarily resident

(1 Marks)

9. Mr. X was appointed as an authorized person contravenes directions by RBI and also failed to file returns by RBI . Penalty for such failure and contravention shall be:

- (a) upto Rs. 10000 and additional Rs.2000 per day for continuing offence
- (b) upto Rs. 5000 and additional Rs. 1000 per day for continuing offence
- (c) upto Rs. 12000 and additional Rs. 2500 per day for continuing offence
- (d) upto Rs. 10000 and additional Rs. 4000 per day for continuing offence

(1 Marks)

10. Mr. Satish fell ill on US trip and received Foreign Hospitality from the US Government by virtue of emergent medical aid. Mr. Satish is a Government Servant and hence prohibited u/s 6. What shall be his course of action?

- (a) Inform CG within 20 days
- (b) Inform CG within 1 month if amount exceeds Rs. 100000
- (c) No need to inform CG as emergent medical aid received is outside purview of Sec 6 prohibition
- (d) Inform SG within 30 days

(1 Marks)

11. The officer attached Property of Mr D as per Section 5(1) of Prevention of Money Laundering Act 2002. Within how many days from such attachment, the officer is required to file complaint before the adjudicating authority?

- (a) 45 days
- (b) 60 Days
- (c) 90 Days
- (d) 30 Days

(1 Marks)

12. When any employee is of a listed Company is caught making profit out of Unpublished Price Sensitive Information , he shall be penalize with Fine of:

- (a) 30Cr. or 2 times of profit
- (b) 25Cr. or 4 times of profit
- (c) 10 Lacs to 25Cr. Or 3 times of profit
- (d) 50Cr. or 2 times of profit

(1 Marks)

J. K. SHAH CLASSES