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SUBJECT- LAW

Test Code – FNJ 7229

BRANCH - () (Date :)

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ANSWER-1

ANSWER-A

(a) According to Section 152(6) of the Companies Act, 2013, unless the articles provide for the retirement of all directors at every annual general meeting, not less than two – thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation.

Directors liable to retire by rotation : 11 * 2/3 = 7.3 or 8

So, maximum number of persons, who can be appointed as directors not liable to retire by rotation : 11 – 8 = 3.

(1 MARK)

(b) According to Section 152(6)(c) of the Companies Act, 2013, $1/3^{rd}$ of such of the Directors for the time being as are liable to retire by rotation, or their number is neither three nor a multiple of three, then, the number nearest to the $1/3^{rd}$ shall retire from office. Therefor the Directors liable to retire by rotation are 11*2/3 i.e. 7.3 or 8.

No. of directors to retire at AGM : 8 * 1/3 i.e. 2.67. Hence nearest to $1/3^{rd}$ is 3.

(1 MARK)

(c) According to Section 160 of the Companies Act, 2013, a person who is not a retiring director in terms of Section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he has, not less than 14 days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director.

In the instant case, one nomination was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received i.e. 14^{th} day. Hence, the contention of the directors are valid.

(2 MARKS)

(d) According to Section 149(1) of the Companies Act, 2013, if the company wants to appoint more than 15 directors, it can do so after passing a special resolution. Hence, the Board of directors of Frontline Limited, before increasing the strength of directors from 11 to 18 by appointing additional directors, have to pass a special resolution.

But, these appointments cannot be done through single resolution. Each director shall be appointed by a separate resolution unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement. A resolution moved in contravention of this provision shall be void, whether or not objection thereto was raised at the time it was so moved. [Section 162 of the Act].

(2 MARKS)

ANSWER-B

Section 197 of the companies provides a way to pay managerial remuneration in case of company's having adequate profits. As per the section, the total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 of the Companies Act, 2013.

In case where there is any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together.

Moreover, any remuneration for services rendered by any such director which are of a professional nature shall not be included in the managerial remuneration. Further, a director may receive remuneration by way of a fee for each meeting of the board, or a committee thereof attended by him.

As per the facts given in the questions, following are the answers :

(i) Commission at the rate of 5% P.A to Mr. X its Managing Director can be paid as per the provisions of the Companies Act, 2013.

(ii) To other directors a monthly fixed remuneration of Rs. 60,000 along with a commission of 1% on net profits of the company with a limit that maximum remuneration per director shall not exceed 2% of net profits. This remuneration can be paid if this remuneration along with th e remuneration paid above does not exceed the maximum limit of managerial remuneration of 11% under the Act.

(iii) Additional remuneration paid to Mr. Careful for professional services rendered by him. This remuneration can be paid by the company as it is outside the purview of managerial remuneration.

(3 MARKS)

Here as per the fact, it is assumed that the company is earning profits and hence is paying remuneration to its managerial personnel under section 197 of the Act.

(1 MARK)

ANSWER-2

ANSWER-A

As per Section 186(2) of the Companies Act, 2013, no company shall directly or indirectly

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent of its paid – up share capital, free reserves and securities premium account on one hundred per cent of its free reserves and securities premium account, whichever is more, except with the prior approval by means of a special resolution passed at a general meeting.

However, explanation provided in section 186(2) of the Companies Act, 2013 states that for the purposes of this sub – Section, the word "person" does not include any individual who is in the employment of the Company.

As per the given facts, ASK Housing Finance Company Limited was prepared to give housing loans to the employees of M/s NEWS Pharmacy Limited on the condition that such loans are guaranteed by the M/s NEWS Pharmacy Limited exceeding the limits prescribed in the Companies Act, 2013.

(4 MARKS)

Here, the loans are to be guaranteed by M/s. News Pharmacy Limited for its employees which falls within the purview of the explanations which includes guarantees given for the employees. So, section 186(2) shall not be applicable to it. Hence, it can give the guarantee without any condition on the limits imposed in the Section 186(2). Hence, there are no legal requirements to be fulfilled under the Companies Act, 2013 to give effect to the above proposal.

Answer will remain the same, even if the company provides securities instead of guarantee as the provisions of the Section 186(2) are applicable for providing security also.

(2 MARKS)

ANSWER-B

Section 209 of the Companies Act, 2013 states that, if the Registrar has reasonable ground to believe that the books and papers of :

- → A company or
- → Relating to the key managerial personnel or
- → any director or
- → Auditor or
- → Company secretary in practice if the company has not appointed a company secretary

are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court for seizure of such books and papers :

(a) Enter with such assistance as may be required and search the place where such books or papers are kept, and

(b) Seize such books and papers as he considers necessary after allowing the company to take copies of the order from the Special court.

In the given scenario, the registrar has failed to obtain possession from special court. So, he is not authorized to enter the premises of the company and seize the books of accounts of MBIND Bronze Limited. Hence, the contention of MBIND Bronze Limited is valid in law.

(4 MARKS)

ANSWER-3

ANSWER-A

(i) Right to apply for oppression and mismanagement: As per the provisions of Section 244 of the Companies Act, 2013, in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lowest of the

following:

100 members; or

1/10th of the total number of members; or

Members holding not less than 1/10th of the issued share capital of the company. The share holding pattern of MNC Limited is given as follows:

Rs. 5,00,00,000 equity share capital held by 500 members

The petition alleging oppression and mismanagement has been made by some members as follows:

(1) No. of members making the petition – 80

(2) Amount of share capital held by members making the petition – Rs. 10,00,000

The petition shall be valid if it has been made by the lowest of the following:

100 members; or

50 members (being $1/10^{th}$ of 500); or

Members holding Rs. 50,00,000 share capital (being $1/10^{th}$ of Rs. 5,00,00,000)

As it is evident, the petition made by 80 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 50 members in this case. Therefore, the petition is maintainable.

(3 MARKS)

(ii) Further section 221 of the Companies Act, 2013 states that where it appears to the Tribunal, on any complaint made by such number of members as specified under sub-section (1) of section 244 having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

In case of contravention of order of Tribunal, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(3 MARKS)

ANSWER-B

Central Government may by order provide for amalgamation in public interest.

According to Section 237 of the Companies Act, 2013, where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government, may by order notified in the official gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights interest, authorities and privileges and with such liabilities, duties and obligations, as may be specified in the order.

Continuation by or against the transferee company of any legal proceedings

The order may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to amalgamation.

Same interest rights or compensation

Every member or creditor including a debenture holder of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor and in case the interest or rights of such member or creditor in or against the transferee company are less than the interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the official gazette and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.

(4 MARKS)

ANSWER-4

ANSWER-A

Section 348 of the Companies Act, 2013 states that, if the winding up of a company is not concluded within one year after its commencement then the Company Liquidator shall file a statement in such form containing such particulars as may be prescribed. Such statement shall be filled within two months of the expiry of such year and it shall be filled continuously thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals as may be prescribed. The statement shall be duly audited, by a person qualified to act as auditor of the company and position of with respect to the proceedings in the liquidation.

The statement shall be filled with the tribunal in the case of a winding up by the Tribunal. A copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

Where a statement relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof,

- to the Central Government, if that Government is a member of the Government company;
- to any State Government, if that Government is a member of the Government company ; or
- to the Central Government and any State Government, if both the Governments are members of the Government company.

Paramount Limited is a Government Company

In the current scenario, we can understand that the Paramount Limited is a government company in which Central Government is a member and hence statement is also required to file to the Central Government along with the Tribunal and Registrar. So, the opinion by the Company liquidator is not tenable in the eyes of the law and he is liable for penal action under the Act.

The company liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

Paramount Limited is a Non – Government Company

In the current scenario, the Paramount Limited is a non – government company hence statement is only required to file with the Tribunal and Registrar only. So, the opinion by the Company Liquidator is tenable in the eyes of the law and he is not liable for any penal action under the Act.

(6 MARKS)

ANSWER-B

(a) As per section 581 Y of the Companies Act, 1956, unless the Articles requires a larger number, one fourth of the total number of members of the producer company shall be the quorum at a general meeting. In this case, the company has got 100 members and hence, the quorum is 25.

(2 MARKS)

(b) Section 581 V of the Companies Act, 1956, provides that the quorum for a meeting of the Board shall be one third of the total strength of directors, subject to a minimum of three.

In the given case, 1/3 of 6 directors comes to 2, but minimum required is 3, hence, the quorum will be 3 directors for a board meeting.

(2 MARKS)

ANSWER – 5

1. **C**
2. **B**
3. **A**
4. **B**
5. **C**
6. **A**
7. **B**
8. **C**
9. **B**
10. **C**

(10 MARKS)