FINAL – November 2017

THE COMPANIES ACT, 2013

Test Code – FNJ 0011
Branch (MULTIPLE) (Date : 04.06.2017)

(50 Marks)

Note: All questions are compulsory.

Question 1 (4 marks)

As per Rule 3 of the *Companies (Declaration and Payment of Dividend) Rules), 2014,* in the event of inadequacy or absence of profits in any year, a company may declare dividend out of surplus subject to the fulfilment of the following conditions:

1. The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year;
   Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.
2. The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement;
3. The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared;
4. The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

(2 Marks)

In the given case the Jeevan Ltd. can declare a dividend of 25% provided it has the required residual reserve, after such payment, of at least 15% of its paid up capital as appearing in its latest audited financial statement. The company, Jeevan Ltd. should have the dividend recommended by the Board and put up for the approval of the members at the Annual General Meeting as the authority to declare lies with the members of the company.

(2 Marks)

Question 2 (6 Marks)

According to section 128(1) of the Companies Act, 2013, every company is required to prepare and keep the books of accounts and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting. **(3 Marks)**

The proviso to section 128(1) further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. Further company may keep such books of accounts or other relevant papers in electronic mode as per the *Rule 3 of the Companies (Accounts) Rules, 2014.* **(3 Marks)**

Therefore, the Board of Jai Bharat Ltd. is empowered to keep its books of account at its corporate office in Jaipur by following the above procedure.

Question 3(8 marks)

(a) Woman Director

Proviso to Section 149(1) read with *Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014* provides that the following class of companies shall appoint at least one woman director. These companies under the provisions are:

(1) Every listed company; and

(2) Every other public company having –

(a) paid-up share capital of ` 100 crore or more; or

(b) a turnover of ` 300 crore or more. **(2 Marks)**

Accordingly, since M Limited is a public company and the paid up capital of company is ` 300 crores, and turn over is ` 500 crores the company shall appoint at least one woman director. **(2 Marks)**

(b) Independent Director

As per Section 149(4), every listed public company shall have at least 1/3rd of the total number of directors as independent directors. The Central Government, may however, prescribe the minimum number of Independent Directors in case of any class or classes of public companies. According to *Rule 4 of the Companies (Appointment and qualification of Directors) Rules, 2014* provides that the following companies are required to have at least 2 directors as independent directors:

(i) The public companies having paid up share capital of ` 10 crore or more; or

(ii) Public companies having turnover of ` 100 crore or more; or

(iii) Public companies which have, in aggregate, outstanding loans, debentures, and deposits exceeding ` 50 crore. **(2 Marks)**

In the given case, since company fulfils the conditions as required in respect of paid-up capital and turnover, the company must appoint at least 2 independent directors. **(2 Marks)**

Question 4 (4 Marks)

"Resolved that pursuant to the Articles of Association of the company and section 161(1) of the Companies Act, 2013, Mr. More is appointed as an Additional Director of the Luxury Limited with effect from 1st October, 2016 to hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. **(2 Marks)**

Resolved further that Mr. More will enjoy the same powers and rights as other directors. **(1 Mark)**

Resolved further that Mr._____ Secretary of Luxury Limited be and is hereby authorized to electronically file necessary returns with the Registrar of Companies and to do all other necessary things required under the Act." **(1 Mark)**

Question 5 (8 Marks) (2 marks for each sub-question)

Section 135 read with *Companies (Corporate Social Responsibility Policy) Rules, 2014* of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility.

As per the given facts, following are the answers in the given situations-

(i) Amount that Company has to spend towards CSR:

According to section 135 of the Companies Act, 2013, the Board of every company 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, in pursuance of its CSR Policy.

Accordingly, net profits of Super Real Estate Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2016-2017.

(ii) Composition of CSR Committee:

(a) In the case of listed company, the CSR Committee shall consist of three or more directors, out of which at least one director shall be an independent director.

(b) Whereas in case of an unlisted public company or a private company, is not required to appoint an independent director and shall have its CSR Committee without such director. A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

(iii) In case of failure to incur expenditure for CSR: If the company fails to provide such amount or incur expenditure for CSR, the Board shall, in its report, under section 134 of the Companies Act, 2013 specify the reasons for not spending the amount.

As no quantum of punishment is given under section 135, section 450 of the Companies Act, 2013 says that, the company and every officer of the company or any other person who is in default or contravenes in compliances with section 135 shall be punishable with fine which may extend to ` 10,000. In case of continuation of contravention with further fine extending to ` 1000 for every day after the first during which the contravention continues.

(iv) Activities not to be considered as CSR Activities: The *Companies (CSR Policy) Rules, 2014* provides for some activities which are not considered as CSR activities:

(1) The CSR projects or programs or activities undertaken outside India.

(2) The CSR projects or programs or activities that benefit only the employees of the company and their families.

(3) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.

(4) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

Question 6 (4 Marks)

Board Meeting: Section 173(1) of the Companies Act, 2013 provides for the holding of the Board meetings. According to the section, every company shall hold the first meeting of the Board of Directors within 30 days of the date of its Incorporation and with respect to the subsequent board meetings, every company shall hold minimum of 4 meetings every year provided that the gap between two consecutive board meetings shall not be more than 120 days. **(1 Mark)**

However, the Central Government vide its Notification G.S.R. 466(E) dated 5th June 2015, notified that section 173(1) shall apply to the company formed under section 8 of the Companies Act, 2013 only to the extent that the Board of Directors, of such companies shall hold at least one meeting within every six calendar months. **(1 Mark)**

As per the given facts, Seafood Ltd. was incorporated on 1st April, 2015 and conducted four Board meetings during the financial year 2015-16 on 6th April, 2015, 28th August, 2015, 30th September 2015 and 30th March 2016.

Considering the above provisions in the given situations-

(i) Company has contravened the above provisions of the Companies Act, 2013 in respect of the conduct of the subsequent board meetings. The gap between two consecutive board meetings i.e. the meeting held on 6th April, 2015 and 28th August, 2015 is 143 days which is more than 120 days and similarly the gap between the meeting held on 30th September 2015 and 30th March 2016 is 181 days which is again more than 120 days. **(1 Mark)**

(ii) In the case of company incorporated under section 8 of the Companies Act, 2013, since the board meetings have been conducted within 6 calendar months, so there is no contravention of the provision related to holding of board meetings. **(1 Mark)**

Question 7 (6 Marks)

According to section 396 (1) of the Companies Act, 1956 where the Central Government is satisfied that it is essential in public interest that the two public limited companies should amalgamate, the said Government may by order notified in the Official Gazette, provide for the amalgamation of the said two 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. **(2 Marks)**

The Central Government has also the power to pass and provide for any consequential incidental and supplementary provisions in connection with the amalgamation including the confirmation by or against the transferee company of any legal proceedings pending by or against any transferor company.

Any member or creditor who is aggrieved by the order of the amalgamation resulting in any financial loss is entitled to compensation which will be assessed by such authority as may be prescribed. Any person aggrieved by the order of compensation can file an appeal to the Company Law Board within 30 days of the publication of the order of compensation. **(2 Marks)**

Hence, Mr. Ganesh can challenge the above amalgamation order of the Central Government. He can file an appeal against the order of compensation to the Company Law Board within 30 days of the publication of the order of compensation. **(2 Marks)**

Question 8(4 marks)

Under section 244 of the Companies Act, 2013, in the case of a company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:

(a) Not less than 100 members of the company or not less than one -tenth of the total number of members, whichever is less; or

(b) Any member or members holding not less than one-tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares. **(2 Marks)**

In the given case, since there are eight shareholders. As per the condition (a) above, 10% of 8 i.e. 1 satisfies the condition. Therefore, a single member can present a petition to the Tribunal, regardless of the fact that he holds less then one -tenth of the company's share capital. **(2 Marks)**

Question 9 (6 marks) (1 Mark for 1 point)

Offences to be non-cognizable: According to section 439 of the Companies Act, 2013:

(i) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

(ii) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf.

Whereas in case of a government companies, court shall take cognizance of an offence under this Act which is alleged to have been committed by any company or any officer thereof on the complaint in writing of a person authorized by the Central Government in that behalf. [Vide Notification G.S.R. 463(E) dated 5th June 2015]

(iii) The court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorized by the Securities and Exchange Board of India.

(iv) Nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(v) Where the complainant is the Registrar or a person authorised by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

(vi) The above provisions shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

(vii) The liquidator of a company shall not be deemed to be an officer of the company.

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