



## FINAL – November 2017

THE COMPANIES ACT, 2013

Test Code – P 69

Branch (MULTIPLE) (Date : 17.09.2017)

(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 turnover 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 5<sup>th</sup> 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 1<sup>st</sup> April, 2015 and conducted four Board meetings during the financial year 2015-16 on 6<sup>th</sup> April, 2015, 28<sup>th</sup> August, 2015, 30<sup>th</sup> September 2015 and 30<sup>th</sup> 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 6<sup>th</sup> April, 2015 and 28<sup>th</sup> August, 2015 is 143 days which is more than 120 days and similarly the gap between the meeting held on 30<sup>th</sup> September 2015 and 30<sup>th</sup> 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(6 marks)

- (i) **Comprehensive Law:** Insolvency Code is a comprehensive law which envisages and regulates the process of insolvency and bankruptcy of all persons including corporates, partnerships, LLPs and individuals. **(1 mark)**
- (ii) **Withering away of Multiplicity of Laws:** The Code has withered away the multiple laws covering the recovery of debts and insolvency and liquidation process and presents singular platform for all the reliefs relating to recovery of debts and insolvency. **(1 mark)**
- (iii) **Low Time Resolution :** The Code provides a low time resolution and defines fixed time frames for insolvency resolution of companies and individuals. The process is mandated to be completed within 180 days, extendable by maximum of 90 days. Further, for a speedier process there is provision for fast-track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors. **(1 mark)**
- (iv) **One Window Clearance:** The Code has been drafted to provide one window clearance to the applicant whereby he gets the appropriate relief by the same authority unlike the earlier position of law wherein case the company is not able to revive the procedure for winding up and liquidation, has to be initiated under separate laws governed by separate authorities. **(1/2 mark)**
- (v) **Clarity in Process:** There is a clear and unambiguous process to be followed by all stakeholders. There is also shift of control from shareholders and promoters to creditors. **(1/2 mark)**

- (vi) One Chain of Authority:** There is one chain of authority under the Code. It does not even allow the Civil Courts to interfere with the application pending before the adjudicating authority, thereby reducing the multiplicity of litigations. The National Company Law Tribunal (NCLT) will adjudicate insolvency resolution for companies. The Debt Recovery Tribunal (DRT) will adjudicate insolvency resolution for individuals. **(1/2 mark)**
- (vii) Protects the Interests of Workmen and Employees :** The Code also protects the interests of workman and employees. It excludes dues payable to workmen under provident fund, pension fund and gratuity fund from the debtor's assets during liquidation. **(1/2 mark)**
- (viii) New Regulatory Authority :** It provides for constitution of a new regulatory authority, 'Insolvency and Bankruptcy Board of India' to regulate professionals, agencies and information utilities engaged in resolution of insolvencies of companies, partnership firms and individuals. The Board has already been established and has started functioning. **(1/2 mark)**
- (ix) Establishment of Information Utilities (IUs):** A unique feature of code is establishment of Information Utilities (IUs) which are intended to function as a databank to collect, collate and disseminate financial information and to facilitate insolvency resolution. It is envisioned that in the long run, IUs will have data on debts and credits of all the business houses and it will be able to create an automatic trigger in case of default by any debtor and the authority may initiate the insolvency process as required. Such a system will reduce the risk of credit in the economy **(1/2 mark)**

**Question 9 (4 marks)**

**Exceptions to the assets from inclusion in the liquidation estate assets:** The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—

- a)**
- (i) **assets owned by a third party** which are in possession of the corporate debtor, including— assets held in trust for any third party;
  - (ii) bailment contracts;
  - (iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
  - (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
  - (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) **assets in security collateral held by financial services providers** and are subject to netting and set-off in multi-lateral trading or clearing transactions;
  - (c) **personal assets of any shareholder or partner of a corporate debtor** as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;
  - (d) **assets of any Indian or foreign subsidiary** of the corporate debtor; or
  - (e) **any other assets as may be specified by the Board**, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

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