



## FINAL CA – May 2018

### Company Law

Test Code – F46

Branch: Dombivali Date: 28.1.2018

(50 Marks)

*Note: All questions are compulsory.*

#### Question 1 (4 marks)

Section 125 of the Companies Act, 2013 deals with the provisions related to the Investor Education and Protection Fund (IEPF). Sections provides that the Central Government shall establish a Fund to be called the Investor Education and Protection Fund. The fund is established solely to protect and safeguard the interests of investors. (1 mark)

Fund shall be utilised for the following purposes —

- i. To refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;(1 mark)
- ii. For promotion of investors' education, awareness and protection; (1/2 mark)
- iii. For distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement; (1/2 mark)
- iv. For reimbursement of legal expenses incurred in pursuing class action suits under [sections 37](#) and [245](#) by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and(1/2 mark)

For any other purpose incidental thereto, in accordance with such rules as prescribed under the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016. (1/2 mark)

#### Question 2 (8 marks) (2 marks for each)

The first 3 cases stated in the question are based on the provisions of Section 164 (1) of the Companies Act, 2013 and the fourth case is dealt with in section 164 (2) of the said Act. Based on the provisions of the said sections, each case can be discussed as follows:

- (i) Section 164 (1) (c) states that a person shall not be eligible for appointment as a director of a company if he has applied to be adjudicated as an insolvent and his application is pending. Therefore, in the present case, Mr. A cannot be appointed as a Director of a Company – whether public or private.
- (ii) Section 164 (1) (d) states that a person shall not be eligible for appointment as a director of a company if he has been convicted by a court for any offence involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence. In the present case, although the sentence was only two years ago, but the period of sentence was only eight weeks, i.e., less than six months. Hence, Mr. B does not come under the purview of this disqualification and can be appointed as a director of a company.
- (iii) The third case also falls within the provisions of section 164 (1) (d). In this case the imprisonment was for a period of one year, i.e., for six or more months, but since more than five years have elapsed from the expiry of the sentence, Mr. C is no longer disqualified and can be appointed as a director of a company.
- (iv) Section 164 (2) states that a person who is or has been a director of a company which has not filed the financial statements or annual returns for any continuous period of three financial years, then such a person shall not be eligible either to be appointed as a director of other company or

reappointed as a director in the same company. In the present case, DLT Limited has failed to file annual returns. Hence, the disqualification for Mr. D is attracted and he cannot be appointed as a director in other company nor can he be reappointed in the same company.

Question 3 (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 4 (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 5 (4 marks)

Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to a managerial personnel is linked to the effective capital of the company. Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding \* ` 120 Lakhs in the year in case the effective capital of the company is between ` 100 crores to 250 crores. The limit will be doubled if approved by the members by special resolution and further if the appointment is for a part of the financial year the remuneration will be pro-rated. (2 marks)

From the foregoing provisions contained in schedule V to the Companies Act, 2013 the payment of ` 50 Lacs in the year as remuneration to Mr. Boss is valid in case he accepts it, as under the said schedule he is entitled to a remuneration of \* ` 120 Lakhs in the year and his terms of appointment provide for payment of the remuneration as per schedule V. (2 marks)

[\* Note: As per the amendment in Schedule V by the Ministry of Corporate Affairs vide Notification S.O. 2922(E) dated 12th September 2016, part II, for Section II of Schedule V has been revised.]

Question 6 (4 marks)

Penalty for wrongful withholding of property: Section 452 of the Companies Act, 2013 provides for Penalty for wrongful withholding of property. According to the section:

- a. If any officer or employee of a company -
  - i. Wrongfully obtains possession of any property, including cash of the company; or
  - ii. having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorized by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.
  - iii. The Court trying an offence may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to 2 years. (3 marks)

Hence as per the provisions of the Companies Act, 2013 and not giving any emphasis on the terms of employment, the manager of the company can recover possession of the room and the cash wrongfully obtained and the benefits that have been derived from such property or cash. (1 mark)

Question 7 (4 marks)

1. Intimation of changes in particulars specified in DIN application (2 marks)

- a. According to Companies (Appointment and Qualification of Directors) Rules, 2014, every individual who has been allotted a DIN under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such changes(s) in form DIR – 6 in the following manner, namely:
  - i. The applicant shall download Form DIR – 6 from the portal, fill in the relevant changes, verify the Form (DIR-7) and attach duly scanned copy of the proof of the changed particulars and submit electronically.;
  - ii. The form shall be digitally signed by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice;
  - iii. The applicant shall submit the Form DIR -6.
- b. The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.
- c. The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.
- d. The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within 15 days of such change.

2. Resignation of Director (Section 168 of the Companies Act, 2013) (2 marks)

A director may resign from his office by giving a notice in writing to the company. The Board shall on receipt of such notice take note of the same. The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in *Form DIR -12* and post the information on its website, if any.

Such director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in *FORM DIR-11* along with the prescribed fee. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

In the present case, Vijay, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the RoC within the prescribed time.

If the company fails to intimate about the resignation of Vijay to RoC, even then the resignation of Vijay shall take effect from the date on which the notice is received by the company or the date, if any, specified by Vijay in the notice, whichever is later.

Question 8 (4 marks)

The Companies Act, 2013 vide section 380 requires every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to *the Companies (Registration of Foreign Companies) Rules, 2014*, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Question 9 (5 marks)

Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:

- (i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares. (2 marks)
- (ii) In the case of company not having share capital, not less than one-fifth of the total number of its members.

Since the group of shareholders do not number 100 or hold 1/10<sup>th</sup> of the issued share capital or constitute 1/10<sup>th</sup> of the total number of members, they have no right to approach the Tribunal for relief.

However, the Tribunal may, on an application made to it waive all or any of the requirements specified in (i) or (ii) so as to enable the members to apply under section 241.

As regards obtaining relief from Tribunal, continuous losses cannot, by itself, be regarded as oppression (*Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth*).

Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression. (*Thomas Veddon V.J. (v) Kuttanad Robber Co. Ltd*).

Thus the shareholders may not succeed in getting any relief from Tribunal. (3 marks)

Question 10 (6 marks)

The provision of Section 218 of the Companies Act, 2013 states that, the company shall require to take approval of the tribunal before taking action against the employee if there is any pendency of any proceedings against any person concerned in the conduct and management of the affairs of company.

The company shall require approval in the following circumstances:

- discharge or suspension of an employee; or
- punishment to an employee by dismissal, removal, reduction in rank or otherwise; or
- change in the terms of employment to the disadvantage of employee(s);

The Tribunal shall notify its objection to the action proposed in writing.

In case, the company other body corporate or person concerned does not receive the approval of the Tribunal within 30 days of making the application, it may proceed to take the action proposed against the employee. That means it can be considered as a deemed approval by the tribunal. (2 marks)

Appeal to the Appellate Tribunal

If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of 30 days of the receipt of the notice of the objection, refer an

appeal to the Appellate Tribunal in such manner and on payment of fees of Rupees 1,000 as per the schedule of Fees.

The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned. (1 mark)

- Yes, the termination of Mr. Amrit made by the company is totally valid in law and company can do so by considering deemed approval of tribunal. (1 mark)
- In this scenario, Mr. Amrit has not any remedy available. As per the provision of the law appeal to the appellate tribunal can be made only if the person is dissatisfied with the objection raised by the tribunal. Hence, in this case the tribunal has not replied Mr. Amrit cannot refer an appeal to Appellate Tribunal. (1 mark)
- In this case, Mr. Amrit can refer and appeal to appellate tribunal within 30 days of the receiving letter of objection raised by the tribunal and with payment of Fees on ` 1,000 as per schedule of Fees. (1 mark)

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