J.K. SHAH®
TEST SERIES
Evaluate Learn Succeed

SUGGESTED SOLUTION

FINAL MAY 2019 EXAM

SUBJECT- LAW

Test Code – FNJ 7143

BRANCH - () (Date :)

Head Office : Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.
Tel : (022) 26836666

Answer 1: **(1 mark x 30 = 30 marks)**

1) D
2) A
3) 18% per annum
4) 21, 70 years.
5) C
6) False
7) F
8) B
9) B
10) False.
11) A
12) True
13) B
14) True
15) B
16) D
17) False
18) B
19) B
20) B
21) 30 days
22) True
23) A
24) 9/10
25) True
26) Oridinary.
27) True
28) Six
29) D
30) B

Answer 2:

(A)

As per **Section 149(10)** of the Companies Act 2013, an Independent Director shall hold office for a term up to **five consecutive years on the Board of a company**. He shall be **eligible for re – appointment** on passing of a special resolution by the company and disclosure of such appointment in the Board's report. As per section 149(11) **no independent director shall hold office for more than two consecutive terms**. However, such independent director shall be eligible for appointment after the expiration of three years of ceasing to be an independent director. **(2 marks)**

The Ministry of Corporate Affairs in its General Circular 14/2014 dated June 09, 2014 clarified that section 149(10) of the Act provides for a term of "up to five consecutive years" for an independent director. As such while appointment of an independent director for a term of less than five years would be permissible, appointment of any term (whether for five years or less) is to be treated as one term under section 149 (10) of the Act. Further under section 149(11) of the Act, no person hold office of independent director for more than 'two consecutive terms'. **Such a person shall have to demit office after the consecutive terms even if the total number years of his appointment in such two consecutive terms is less than 10 years.** **(2 marks)**

Therefore Mr. Robert **cannot be appointed** as an Independent Director at the AGM proposed to be held in 2018. In such case the person completing 'consecutive terms of less than 10 years' shall be eligible for appointment only after the expiry of the requisite cooling – off period of three years.

(1 mark)

(B)

Delisting of Securities [Section 21A of the Securities Contract (Regulation) Act, 1956]

A Recognised Stock Exchange may delist the securities, after recording the reasons therefore from any Recognised Stock Exchange on any of the ground or grounds as may be prescribed under this Act. **The Securities of a Company shall not be delisted unless the Company concerned has been given a reasonable opportunity of being heard.** A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the Recognised Stock Exchange **within fifteen days** from the date of the decision of the recognised stock exchange delisting the securities. **(1 mark)**

The alleged grounds have been detailed in Rule 21 of the Securities Contract (Regulation) Rules, 1957 which are stated as follows:

(i) the Company has incurred losses during the preceding 3 consecutive years and it has negative net-worth;

(ii) trading in securities of the Company has remained suspended for a period of more than 6 months;

(iii) the securities of the Company have remained infrequently traded during the preceding 3 years;

(iv) the Company or any of its promoters or any of its director has been convicted for failure to comply with any of the provisions of the Act or SEBI Act, 1992, or Depositories Act, 1996 or rules, regulations, agreements made thereunder, as the case may be and awarded a penalty of not less than one crore rupees or imprisonment of not less than 3 years;

(v) the addresses of the Company or any of its promoter or any of its directors, are not known or false addresses have been furnished or the Company has changed its Registered Office in contravention of the provisions of Companies Act 1956 / 2013; or

(vi) shareholding of the Company held by the public has come below the minimum level applicable to the Company as per the listing agreement under the Act and the Company has failed to raise public holding to the required level within the time specified by the recognised stock exchange.

In the instant case, the decision of the Madras Stock Exchange to delist the securities of Herbal Products Limited is valid because the Company has incurred losses during the preceding three consecutive years and it has also negative net worth. **(4 marks)**

Answer 3:

(A)

Power of Reserve Bank of India to inspect banks (Section 35 of the Banking Regulation Act, 1949):

RBI is empowered to conduct inspection of any bank and to give them direction as it deems fit. All banks are bound to comply with such directions. Every directors or other officer of the bank shall produce all such books, documents as required by the inspector. The inspector may examine on oath any director or other officers.

RBI shall supply the bank a copy of such report of the inspection. RBI submits report to Central Government and the latter, on scrutiny, if is of the opinion that the affairs of the bank are being conducted detrimental to the interest of its depositors, it may, after giving an opportunity of being heard, to the bank, may order in writing prohibiting the bank from receiving fresh deposits, direct the RBI to apply section 38 for winding up of the bank. **(4 marks)**

Power of RBI to appoint Directors (Section 36AB of the Banking Regulation Act, 1949): RBI is empowered to appoint additional Directors for the banking company with effect from the date to be specified in the order, in the interest of the bank or that of depositors. Such additional directors shall hold office for a period not exceeding three years or such further periods not exceeding three years at a time. **(2 marks)**

(B)

Failure to maintain proper books of accounts [Section 338(1) of the Companies Act, 2013]

- Where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of **two years immediately** preceding the commencement of the winding up,
- Every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable,
- **Be punishable with imprisonment for a term which shall be not less than one year** but which may extend to three years and with fine which shall not be less than 1 lakh rupees but which **may extend to three lakh rupees.** **(3 marks)**

Conditions when it shall be deemed that proper books of account have not been kept [Section 338(2) of the Act] : For the purposes of sub – Section (1), it shall be deemed that proper books of account have not been kept in the case of any company, -

- Where the business of the company has involved dealings in goods, statements of the annual stock takings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, have not been kept.

  In the instant case, no proper statements of all goods sold and purchased by the company engaged in ordinary retail trade is kept. It shall be deemed that proper books of account have been kept as ordinary retail trade is an exception under sub – Section (2). Thus, opinion of CFO is correct.

  If the company is engaged in wholesale trade instead of ordinary retail trade, then it is deemed that proper statements of all goods sold and purchased by the company engaged in wholesale retail trade is not kept for more than 3 years period immediately prior to the date of winding up application. Hence, in this case, the CFO opinion will not hold good and will be punishable.

(C)

(i) According to section 173(3) of the Companies Act, 2013, a meeting of the board shall be called by giving **not less than 7 days' notice** in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

According to the question, **two of the independent directors on the Board has objected** on the grounds that no proper agenda for the meeting was circulated.

The Companies Act, 2013 does not specifically provide for sending agenda along with the notice of the meeting. However, generally as a good secretarial practice, the notice is accompanied with the agenda of the meeting. Thus, the contention of the independent directors objecting on the grounds that no agenda for the meeting was circulated, does not hold good.

Further, the Chairman of Greenhouse Limited has convened the Board meeting by serving a two weeks' notice (i.e. more than 7 days). Hence, the meeting shall be valid. **(4 marks)**

(ii) According to section 173 of the Companies Act, 2013,

(a) The directors can participate in a meeting of the Board either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time. Further, Central Government may provide for matters which cannot be dealt in a meeting through video conferencing or other audio visual means.

(b) A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company.

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. Further, in case the independent directors are not present at such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Hence, Purple Florence Limited can hold a board meeting at a shorter notice through video conferencing, for transacting urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. Further, if the independent directors are absent from the meeting of the Board, decision taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

(4 marks)

Answer 4:

(A)

Section 4 of the Prevention of Money Laundering Act, 2002 provides for the punishment for Money-Laundering. According to the Section, whoever commits the offence of money-laundering shall be punishable with **rigorous imprisonment** for a term which shall not be **less than three years** but which **may extend to seven years and shall also be liable to fine**. But where the proceeds of crime involved in money- laundering relate to any offence specified under **paragraph 2 of Part A of the Schedule, the maximum punishment may extend to ten years instead of seven years.**

Since, counterfeiting of currency notes is a predicate offence, specified under paragraph 1 of Part A of the Schedule (and not under paragraph 2 of Part A of the Schedule), Mr. Honest can be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Where the offence specified falls under Part A- Paragraph 2 of the Schedule of PMLA, **maximum punishment may extend to 10 years.** **(4 marks)**

(B)

As per section 230(6) of the Companies Act, 2013 where majority of persons at a meeting held **representing 3/4th in value**, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing 3/4th value shall be counted of the following :

- the creditors, or
- class of creditors or
- members or
- class of members, as the case may be,

The majority is dual, in number and in value. A simple majority of those voting is sufficient. **(2 marks)**

Whereas the '**three – fourths' requirement relates to value**. The three – fourths value is to be computed with reference to paid – up capital held by members present and voting at the meeting.

In this case **300 members** attended the meeting, but only 260 members voted at the meeting. As 120 members voted in favour of the scheme the requirement relating to majority in number (i.e. 131) is not satisfied.

260 members who participated in the meeting held 9,00,000 shares, three – fourth of which works out to 6,75,000 while 120 members who voted for the scheme held 7,00,000 shares. The majority representing three – fourths in value is satisfied.

Thus, in the instant case, the scheme of compromise and arrangement of Evergreen Limited is not approved as though the value of shares voting in favour is significantly more, the number of members voting in favour do not exceed the number of members voting against. **(4 marks)**

(C)

Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty fo r Insider Trading. According to this, if any insider

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or
(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary cause of business or under any law, or
(iii) counsels or procures for, any other person to deal in any securities of anybody corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. P. The Minimum penalty is of more than Rs. 10 lakhs which get maximized that SEBI can impose is Rupees twenty-five crores or three times the amount of profits made out of insider trading, **(4 marks)**

(D)

According to section 226 of the Companies Act, 2013, an investigation may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that –

(i) An application has been made under section 241;
(ii) The company has passed a special resolution for voluntary winding up ; or
(iii) Any other proceeding for the winding up of the company is pending before the Tribunal.

In the instant case Origin Paper Ltd. has been incurring business losses for past couple of years. The company passed a special resolution for voluntary winding up. Meanwhile complaints were made to the Tribunal and to the Central Government about foul play of the directors of the company, which adversely affected the interests of shareholders of the company as well as the public.

As the company has passed a special resolution for voluntary winding up of the company, then also the investigation may be initiated against the company under section 226 of the Companies Act, 2013.

Yes as per the above provision, though investigation was initiated against the company, it shall not bar members to file an application to Tribunal for Relief under section 241 of the companies Act, 2013.

According to the said section, any member of a company may apply to the Tribunal for an order on the complains that –

(i) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or
(ii) the material change taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by

reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members.

The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order.

Where any members of a company are entitled to make an application, any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them. **(6 marks)**

Answer 5:

(A)

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 :

(1) If any officer or employee of a company -

(a) Wrongfully obtains possession of any property, including cash of the company; or

(b) 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.**

(2) 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.**

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. **(5 marks)**

(B)

Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an act:

(1) what was the law before making of the Act,

(2) what was the mischief or defect for which the law did not provide,

(3) what is the remedy that the Act has provided, and

(4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning *[CITv. Sodra Devi (1957) 32 ITR 615 (SC)].* **(5 marks)**

(C)

Agreements at different stage in different market are prohibited under section 3(1) of the Competition Act, 2002. Any agreement amongst enterprises or persons at different stage of the production chain in different markets, in respect of production, supply, distribution, storage, sale etc. shall be a void agreement if it causes or is likely to cause an appreciable adverse effect on Competition in India including:

(1) Tie-in agreement: Tie in agreement includes any agreement requiring a purchaser of goods, as a condition of such purchase to purchase some other good;

(2) Exclusive supply agreement: Exclusive supply agreement includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.

(3) Exclusive distribution agreement: Exclusive distribution agreement includes any agreement to limit, restrict or withhold the output or supply of goods or allocate any area or market for the disposal or sale of the goods;

(4) Refusal to deal: Refusal to deal includes any agreement, which restrict, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

(5) Resale price maintenance: Resale price maintenance includes any agreement to sell goods on condition that the price to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged. **(5 marks)**

(D)

Section 7(A) of the Securities (Contracts) Regulation Act, 1956 provides that a recognized stock exchange is empowered to amend rules to provide for all or any of the following matters:

(a) Restriction of voting right to members only.

(b) Regulation of voting rights by specifying that each member is entitled to one vote only irrespective of number of shares held.

(c) Restriction on right of members to appoint proxy.

Such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (a), (b), and (c).

As such Bombay Stock Exchange can restrict the appointment of Veer Ltd., as proxy, if rules of the exchange so provide. If it is not so provided, **rules may be amended and after getting approval of the Central Government regarding amendment, it can restrict appointment of proxies.**

Bombay Stock Exchange can also restrict the voting rights of Param Ltd. if rules of the exchange so provide. If it is not so provided, rules may be amended and after getting approval of Central Government regarding amendment, it can restrict the voting rights of Param Ltd. **(5 marks)**

Question 6:

(A)

According to Section 417 (1) of the Companies Act, 2013, the Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who –

(a) Has been adjudged an insolvent; or –
(b) Has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude : or
(c) Has become physically or mentally incapable of acting as such President, the Chairperson, or Member, or
(d) Has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member; or
(e) Has so abused his position as to render his continuance in office prejudicial to the public interest :

Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (b) to (e) without giving him a reasonable opportunity of being heard.

As per the proviso stated above, in case of sub – clause (a), i.e. where there is a case of insolvency, there is no requirement of giving an opportunity of being heard by the member of the NCLAT. Hence, the action taken by the Central Government against PRTJ is valid. **(3 marks)**

Circumstances under which the Central Government can remove the President, the Chairperson etc.

According to Section 417(2) of the Companies Act, 2013, the President, the Chairperson or the Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government in which such President, the Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard.

In the instant case, it is advised that the decision of the Central Government to remove (without giving reasonable opportunity of being heard) Mr. PRTJ, member of NCLAT who was adjudged as an insolvent by a competent authority is appropriate as per the clause (a) of Section 417(1) of the Companies Act, 2013. **(3 marks)**

(B)

To convert a Inter State Co-Operative Society into a producer company the provisions of Section 581 J of the Companies Act, 1956 should be kept in mind and should be followed. These provisions provide that-

1. **Application to registrar:** Any inter-state co-operative society having objects for multiplicity for states may make an application to the Registrar for registration as Producer Company.

2. **Formalities to be complied with:** Such application shall be accompanied by—
   (a) a copy of the special resolution, of not less than two-third of total members of inter-State Co-Operative society, for its incorporation as a producer company,
   (b) a statement showing—
      (1) names and addresses or the occupation of the directors and Chief Executive, if any; and
      (2) list of members, of such inter-State co-operative society;

(c) a statement indicating that the inter-State co-operative society is engaged in any one or more of the objects specified in section 581 B;

(d) a declaration by two or more directors of the inter-State co-operative society certifying that particulars given in clause(a) to (c) are correct.

3. **Naming of company:** The word "Producer Company Limited" should form part of its name to show its identity.

4. **Time period for registration**: On compliance with the requirements of the Act, the Registrar shall, within a period of thirty days of the receipt of application, certify under his hand that the inter-State co-Operative society applying for registration is registered and thereby incorporated as a producer company.

5. **Eligibility to file an application for such registration:** A co-operative society formed by producers, by federation or union of co-operative societies of producers or co-operative of producers, registered under any law for the time being in force which has extended its objects outside the State, either directly or through a union or federation of co-operatives of which it is a constituent, as the case may be, and any federation or union of such co-operatives, which has so extended any of its objects or activities outside the State, shall be eligible to make an application as above to obtain registration as a producer company under this Part.

6. Governing of this transformed company by the provisions of this Part of the Companies Act, 2013: The Inter-State Co-operative Society upon its registration, under this section transformed into a producer company, and thereafter shall be governed by the provisions of this Part to the exclusion of the law by which it was governed, save in so far as anything done or omitted to be done before its registration as a producer company, and notwithstanding anything contained in any other law for the time being in force, no person shall have any claim against the co-operative institution or the company by reason of such conversion or transformation.

7. Deletion of the previous registration: Upon registration as a producer company, the registrar of Companies who registers the company is required to intimate the Registrar with whom the erstwhile inter-State co-operative society was earlier registered for appropriate deletion of the society from its register.

In compliance with above provision Fresh Fruits Co-operative Society can be converted into producer company. **(8 marks)**

(C)

(i) In terms of the definition of a foreign company under section 2(42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which :

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode ; and

(b) Conducts any business activity in India in any other manner.

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

From the above definition, the status of Hillways Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India.

(ii) As per Section 2(42) read with the Companies (Registration of Foreign Companies) Rules, 2014 of the Companies Act, 2013, any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically

or through electronic mode ; and conducts any business activity in India in any other manner is a foreign company.

Further the above said rules states the meaning of "electronic mode". It means carrying out electronically based, whether main server is installed in India or not, including, but not limited to -

(a) business to business and business to consumer transactions, data interchange and other digital supply transactions;
(b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;
(c) financial settlements, web based marketing, advisory and transactional services, data base services and products, supply chain management;
(d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
(e) all related data communication services whether conducted by e – mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Looking to the above description, it can be said that being involved in business activity through telemarketing, LMP Paper Ltd. will be treated as foreign company.

(iii) The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of sections 379 to 393. The penalties for non – filing or for contravention of any provision for this chapter including for non – filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which provides that if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with a fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to Rs. 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5,00,000, or with both. **(2 marks x 3 = 6 marks)**