

Division A: Multiple Choice Questions

Instructions: All questions are compulsory.

(30 Marks)

Integrated Case Scenario 1 (8 Marks)

Narmada Limited (The Company) is incorporated as a Private Limited Company under the provision of Companies Act, 1956 with the Registrar of Companies, Gwalior, Madhya Pradesh. The company is having its registered office at Plot No.1, First Floor, West Chamber, Gwalior, Madhya Pradesh. Authorized share capital of the Company is Rs. 5, 00,000/-. The Issued, subscribed and paid up share capital of the Company is Rs. 5,00,000/-. The main objects of the company are construction of building and housing and also educational.

A notice of struck off has been received from Registrar of Companies, Gwalior, Madhya Pradesh by the Narmada Limited. Registrar of Companies, Gwalior, Madhya Pradesh issued a notice on company for non-compliance of provisions of the Companies Act, 2013 in respect of filing of Annual Returns and Financial Statements for years 2014-15 to 2017-18 and subsequently the name of the company was struck off under Companies Act, 2013 read with Rule 7 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. Aggrieved by the order of Registrar of Companies, Gwalior, Madhya Pradesh, Narmada Limited filed an appeal before National Company Law Tribunal (NCLT), Gwalior under Section 252 of the Companies Act, 2013 and submitted that the company was in operation and the business activities were carried out by the company during the period of striking off but the reporting of such activities through Annual Returns and Financial Statement had not been filed with Registrar of Companies due to inadvertence on part of the management

You are a Practicing Company Secretary and the Company has hired you as a Consultant to advise Narmada Limited on the following, considering the above facts:

1. In the above situation Name of Narmada limited has been struck off by ROC under which section?
 - (a) Section 248(1)
 - (b) Section 248(2)
 - (c) Section 249
 - (d) Section 252

2. What is the time limit within which Narmada Limited can file an appeal to NCLT under section 252(1)?
- (a) within a period of 2 years from the date of such order
 - (b) within a period of 3 years from the date of Incorporation
 - (c) within a period of 3 years from the date of such order
 - (d) within a period of 2 years from the date of Incorporation
3. What are the grounds on which Registrar of Companies cannot remove the name of a company from Registrar of Companies?
- (a) company has failed to commence its business within 1 year of its incorporation
 - (b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A;
 - (c) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.
 - (d) Company Has not appointed First Director within 180 days
4. If a company files an application with the Registrar under section 248 for the purpose of removal of name of the company from the register of companies, but such application is in contravention of section 249, then the company shall be punishable with fine which may extend upto
- (a) Rs. 50,000
 - (b) Rs. 1 lac
 - (c) Rs. 2 lacs
 - (d) Rs. 5lacs

Integrated Case Scenario 2 (8 Marks)

A Corporate Debtor defaulted in the payment to the Operational Creditor, Safe Bank, a foreign bank, amounting to INR 1,000 crore. A certificate was also furnished by the Safe Bank with regards to the non-payment of the outstanding amount by the Corporate Debtor and repeated reminders as to the payment of the debt were made, but such communications could not influence the Debtor to make the payment, pursuant to which a Statutory Notice was sent by the Operational Creditor under the Companies Act. The Corporate Debtor has replied to such notice and disputed the existence of any such outstanding debt on the part of the Debtor.

After, the Insolvency and Bankruptcy Code (the Code) was enacted in 2016, the Operational Creditor furnished a Demand Notice to the Corporate Debtor under

Section 8 of the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor replied to the notice and disputed saying that there existed no outstanding default on its part and simultaneously, also questioned the validity of the Purchase Agreement.

Aggrieved by the action of the Corporate Debtor, the Operational Creditor approached the National Company Law Tribunal (NCLT) and applied for the initiation of the Corporate Insolvency Resolution Process. NCLT rejected the application for initiation of Corporate Insolvency Resolution Process. Operational Creditor aggrieved by the decision of NCLT, preferred an appeal to the National Company Law Tribunal (NCLAT), which also upheld the decision of NCLT.

Subsequently, the Operational Creditor approached the Supreme Court for the redressal of its grievance.

In this backdrop, answer the following questions:

1. Give reasons for the rejection of the application for the initiation of the Corporate Insolvency Resolution Process by NCLT and NCLAT citing applicable provisions of the Code.
 - (a) The Amount of debt is below prescribed limit under Insolvency Bankruptcy Code to initiate CIRP
 - (b) The Proceeding is already pending under Companies Act and hence cannot be initiated under IBC
 - (c) As the claim is disputed by Operational Creditor, hence application cannot be filed by Corporate Debtor
 - (d) None of the Above

2. When can CIRP be initiated under IBC
 - (a) The minimum amount of default is Rupees Five Lakh or such higher amount which shall not exceed Rupees Two Crore.
 - (b) The minimum amount of default is Rupees One Lakh or such higher amount which shall not exceed Rupees One Crore.
 - (c) The minimum amount of default is Rupees Ten Lakh or such higher amount which shall not exceed Rupees Three Crore.
 - (d) The minimum amount of default is Rupees Eight Lakh or such higher amount which shall not exceed Rupees Three Crore.

3. In the above situation whether safe bank can assign or legally transfer its debt to a financial creditor:
- (a) Yes. However, the transferee shall be considered as an operational creditor to such extent of transfer.
 - (b) Yes but the transferee shall be considered as a financial creditor in relation to such transfer.
 - (c) No. An operational creditor cannot assign or legally transfer any operational debt to a financial creditor.
 - (d) No. An operational creditor can assign or legally transfer an operational debt only to an operational creditor.
4. Which of the following activities shall not be prohibited or terminated during the moratorium period:
- (a) Transferring, encumbering, alienating or disposing of any assets by the corporate debtor.
 - (b) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
 - (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor.
 - (d) Making sales in the ordinary course of business or rendering services therein

Multiple choice questions (Total 14 marks)

1. Mr. George, director of ABC Ltd. absents himself for a period of 13 months with notice. Hence the Company decides on appointing an Alternate Director. However, Legal advisor of the Company is of the opinion that an Alternate Director cannot be appointed hence the position can be filled in by a Casual Vacancy Director. Is the contention of the Legal Advisor correct?
- (a) Yes, a Casual vacancy director can be appointed. Since its over 12 months and George has attracted disqualification
 - (b) No, since the director has given notice of absence and hence Alternate Director can be appointed.
 - (c) Alternate director as well as original director can be appointed simultaneously
 - (d) None of the above

(2 Marks)

2. A Nomination and Remuneration Committee has 4 member Directors including the Chairperson of BOD. All of whom are non-executive and 2 are Independent Directors. Whether there is compliance of the act?
- (a) Yes, there is compliance of the act
 - (b) No, as all directors should be Independent Directors,
 - (c) No, as the number of non-executive Directors shall be 3
 - (d) No, as the number of member Directors in NRC should be 6 directors
- (1 Marks)**
3. Non-compliance with Sec 232 pertaining to the procedure of merger shall result to the officer of every (transferor/transferee) Company in:
- (a) Imprisonment: Upto 1year Or Fine: 1-5 Lacs Or Both
 - (b) Imprisonment: Upto 6month Or Fine: 1-5 Lakhs Or Both
 - (c) Imprisonment: Upto 1year Or Fine: 1-3 Lacs Or Both
 - (d) None of the above
- (1 Marks)**
4. ABC Ltd, incorporated outside India, having place of business in India and 42 % of its Paid up capital is held by Indian Body Corporate. State the type of company.
- (a) Indian Company,
 - (b) Foreign company,
 - (c) Deemed Indian Company,
 - (d) None of the above
- (1 Marks)**
5. Mr. Somnath is appointed as a director of a Government Company. He did not file his consent to act as director under DIR2 after appointment. Examine with the provisions of the Companies Act if he is legally liable considering the contravention.
- (a) Should file consent within 30 days of appointment.
 - (b) Director of Government Company is exempted from filing consent with the ROC.
 - (c) Company and Officer in default shall be punishable with fine upto Rs. 5, 00,000.
 - (d) None of the above
- (1 Marks)**

6. Lovely Ltd after discharging all its liabilities wanted to make an application to Registrar for removal of its name and for the same they came up with the below proposal, Suggest the correct proposal to the company
- (a) Company needs to take consent of 51% members in terms of Subscribed share capital
 - (b) Company needs to take consent of 75% members in terms of Subscribed share capital
 - (c) Company needs to take consent of 75% members in terms of paid up share capital
 - (d) None of the above

(1 Marks)

7. The Registrar believes that the books and papers of Sundaram Company are likely to be destroyed by the company on complaint received by him. The Registrar entered and searched the premises of Sundaram company after obtaining an order from the Special Court. The Registrar seized the books and papers as he considered necessary on 4 August 2019. On 9 February 2020, the Sundaram company asked the Registrar to return them the books of account back. But the Registrar refused to do so. Advice.
- (a) The Registrar shall return seized books of account within 90 days of such seizure
 - (b) The Registrar shall return seized books of account within 60 days of such seizure
 - (c) The Registrar shall return seized books of account within 180 days of such seizure
 - (d) The Registrar shall return seized books of account within 45 days of such seizure

(2 Marks)

8. X Ltd. is a Australian company having manufacturing units in 4 countries. It is having it's headquarter in Pune and Branch in Beijing. Headquarter at Pune controls branch of Beijing unit. What would be the residential status of manufacturing unit of Beijing?
- (a) Beijing Branch is 'Person resident in India'
 - (b) Beijing Branch is 'Person resident outside India'
 - (c) Beijing Branch is Foreign unit
 - (d) Beijing branch is ordinarily resident

(1 Marks)

9. Mr. X was appointed as an authorized person contravenes directions by RBI and also failed to file returns by RBI . Penalty for such failure and contravention shall be:
- (a) upto Rs. 10000 and additional Rs.2000 per day for continuing offence
 - (b) upto Rs. 5000 and additional Rs. 1000 per day for continuing offence
 - (c) upto Rs. 12000 and additional Rs. 2500 per day for continuing offence
 - (d) upto Rs. 10000 and additional Rs. 4000 per day for continuing offence
- (1 Marks)**
10. Mr. Satish fell ill on US trip and received Foreign Hospitality from the US Government by virtue of emergent medical aid. Mr. Satish is a Government Servant and hence prohibited u/s 6. What shall be his course of action?
- (a) Inform CG within 20 days
 - (b) Inform CG within 1 month if amount exceeds Rs. 100000
 - (c) No need to inform CG as emergent medical aid received is outside purview of Sec 6 prohibition
 - (d) Inform SG within 30 days
- (1 Marks)**
11. The officer attached Property of Mr D as per Section 5(1) of Prevention of Money Laundering Act 2002. Within how many days from such attachment, the officer is required to file complaint before the adjudicating authority?
- (a) 45 days
 - (b) 60 Days
 - (c) 90 Days
 - (d) 30 Days
- (1 Marks)**
12. When any employee is of a listed Company is caught making profit out of Unpublished Price Sensitive Information , he shall be penalize with Fine of:
- (a) 30Cr. or 2 times of profit
 - (b) 25Cr. or 4 times of profit
 - (c) 10 Lacs to 25Cr. Or 3 times of profit
 - (d) 50Cr. or 2 times of profit
- (1 Marks)**

Division B: Descriptive Questions

Question No. 1 is compulsory. Out of remaining five questions attempt any four.

(70 Marks)

Q.1 (a) Rolex Limited, a public limited company with a paid-up capital of Rs. 4 crores wants to enter into contracts with the following for supply of materials and advance certain amounts: (a) With a firm in which the wife of the managing director is a partner, (b). with a private company in which the wife of managing director is a member.

State whether above transactions can be entered and conditions to be fulfilled for such transactions.

(6 Marks)

(b) VGP Ltd. is a listed public Company with a paid up capital of `100 crores as on 31st March, 2020. Mrs. Jasmine, who was one of the promoters of PDS Ltd. (a Joint Venture Company of VGP Ltd.), was appointed as Woman Director on the Board of VGP Ltd. VGP Ltd has the following proposals:

(i) To remove Mr. Z, an Independent Director who was re-appointed for a second term,

(ii) To appoint Mr.N, a nominee Director in the Board as an independent Director,

(iii) To appoint Mrs. Jasmine as an Independent-cum-Woman Director. With reference to the relevant provisions of the Companies Act, 2013, examine:

(i) The validity the above proposals and the appointment of Woman Director already made,

(ii) Whether Mr. N, can be appointed as an Independent Director of PDS Ltd.?

(iii) Is an independent Director entitled for stock option?

(iv) Whether a person who holds the position of a key Managerial Personnel in the same company can be appointed as an independent director?

(8 Marks)

- Q.2 (a) (i)** M/s. Rockstand Limited, a listed company as at 31st March, 2020 as per the audited financial statements is having 300 depositors with Rs. 60 crores of deposit in the company. Out of the total 300 depositors, 35 depositors of the company have formed a group and have appointed Mr. Krish (practicing advocate who is not one of the depositors) as their representative to file an application in the National Company Law tribunal (NCLT) to bring a class action suit against the management of the company as they are of the opinion that the management and conduct of affairs of the company are Being conducted in a manner which is prejudicial to the interest of the depositors Being oppressive. 'Will the application of Mr. Krish be admitted by the Honourable tribunal? Discuss with reference to the provisions of the Companies Act, 2013? **(4 Marks)**
- (ii)** A meeting of members of ABC Limited was convened under the orders of the Tribunal to consider a scheme of compromise and arrangement. The meeting was attended by 350 members holding 10,00,000 shares. 130 members holding 8,00,000 shares voted for the scheme. 160 members holding 1,00,000 voted against the scheme. 60 members holding 100,000 shares abstained from voting. Examine with reference to the relevant provision of the Companies Act, 2013 whether the scheme of ABC Limited is approved by the required majority? **(4 Marks)**
- (b) (i)** The RBI receives a complaint that an authorized person has submitted Inaccurate Statements and information to the RBI in respect of utilization of Foreign Exchange. State the powers of the RBI with regard to inspection of records of the Above authorized person in respect to of the above complaint Referring to the Provisions of FEMA1999, state the duties of the above authorized person. **(3 Marks)**
- (ii)** Kingfisher Limited failed to repay the loan borrowed from Yes Bank, which is holding a charge on all the assets of the company. The Bank took over management of the company in accordance with the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing five persons as directors. The company is managed by Managing Director Mr. Mehul, who has been now removed, referring to the provisions of the said Act, examine whether Mr. Mehul is entitled to compensation for loss of office. **(3 Marks)**

Q.3 (a) Wee Limited, an unlisted company having a paid up share capital of Rs. 12 crores during the preceding financial year has appointed Mr. X, a fellow member of the Institute of Chartered Accountants of India as Chief Financial Officer of the company who is appointed as key Managerial Personnel under section 203 of the Companies Act, 2013. Mr. X is also a fellow member of the Institute of Company Secretaries of India. The Company Secretary post has become vacant In order to reduce the expenses, the company proposes to appoint Mr. X as Company Secretary in addition to Chief Financial Officer post. Whether the proposal legally valid under the provisions of the Companies Act, 2013?

(8 Marks)

(b) Mr. Kishore purchased a Residential House out of the proceeds earned by Drug Trafficking. The flat was attached by the Director after complying given procedures under Section 5 of the Prevention of Money Laundering Act. 2002. Mr. Kishore got a stay from the High Court for any proceedings under the said Act. The stay was subsequently vacated.

- Whether Mr. Guddu, son of Mr. Kishore can occupy the Residential House during the period of provisional attachment?
- State the relevant provisions of the PMLA, 2002 for computing the period of provisional attachment including extension, if any.

(6 Marks)

Q.4 (a) (i) The composition of Audit Committee of M/s Dhara Limited, unlisted Public Company, as on 31-3-2020 comprised of 7 Directors including 4 Independent Directors. The majority of the members of the Audit Committee has the ability to read and understand the financial statements but none of them has accounting or related financial management expertise. The company listed its Securities in a recognized Stock Exchange in the month of August 2020, Referring to the regulations of Securities and Exchanges Board of India [Listing Obligations and Disclosure Requirements] Regulations 2015, decide whether the existing Audit Committee can continue after listing of its Securities?

(4 Marks)

(ii) Success Ltd. got its shares listed with a stock exchange. It has been regularly paying the listing fees as prescribed in the act. Various information about Investors, etc was asked by the stock exchange. Which the company could not furnish in the prescribed time. It was then given a further opportunity to furnish the desired information along with supporting document, but it fails to provide, as the company did not maintain any record. What are the penalties leviable against the company under the securities contracts (Regulation) Act, 1956 for the failure to furnish the information. **(2 Marks)**

(b) (i) A foreign Co., Ventex corp. , established by few Indian in Honkong. The management of the company used amount to transfer to the Balaji trust, Chennai, India. Enumerate in the given situation whether the donation so made by ventex corp. is a foreign contribution. Is the acceptance of such donation by the Balaji trust is valid.

(4 Marks)

(ii) Shree Ram Motors Limited and Apollo wheeler Limited entered into an agreement regarding annual maintenance services to be provided by Shree Ram Motors Limited for all commercial vehicles within the state of Maharashtra for seven years. The agreement was containing a clause that in the event of a dispute between the parties the matter would be submitted to arbitration. At the end of the seventh year, the service agreement was not renewed. Decide whether the arbitration agreement should not be treated as terminated. Also describe the other grounds of termination of arbitration. **(4 Marks)**

Q.5 (a) (i) Aggrieved by an order of NCLT dated 05.06.2020, passed without the consent of the parties, Manasvi Ltd. decided to file an appeal before NCLAT. Meanwhile, the employees and officers of the company went on a strike from 10.06.2020 demanding higher bonus and as a result of which, the operational activities were badly affected. The strike was called off on 15.07.2020. Thereafter, the appeal was filed on 26.07.2020 before NCLAT with a prayer for condoning the delay in filing the appeal A single Judicial member of NCLT started the hearing. With reference to the provisions of the Companies Act, 2013, examine the following.

(i) Whether the appeal is admissible?

(ii) Is the appeal transferable to a Bench consisting of two members?

(iii) Maximum period allowed for condonation

(6 Marks)

(ii) Golden Limited decided to go for voluntary winding up and accordingly the Board of Directors at a meeting are about to take the necessary steps to initiate the winding up proceedings. The Board of Directors of the company approached you for guidance in this regard. Please list out the steps required under the Insolvency & Bankruptcy Code 2016 before approval of such liquidation proposal with specific reference to meetings and actions of relevant stakeholders.

(5 Marks)

(b) Explain the provisions of the Companies Act, 2013 relating to preparation and filing of Statement of Affairs (SA) in case of winding of a company by the Tribunal, with regard to the following aspects:

Who is required to prepare and file SA and whether cost and expenses incurred in preparing SA are recoverable and the period within which the same is required to be submitted and to whom? Also state about delay in filing SA and upto what period the same is allowed.

(3 Marks)

Q.6 (a) (i) Mr. Hitanshu an Indian citizen holds 23% of the paid up capital of Insta Limited, a company which was incorporated in USA with a paid up capital of 30 million Dollars. Tata Limited a company registered in India holds 32% of the paid up capital of Insta Limited. Insta Limited has recently established a share transfer office at Mumbai. The company seeks your advice as to what formalities it should observe as a foreign company under Companies Act, 2013.

(6 Marks)

(ii) Shareholders of Tom Ltd are not satisfied about functioning of the company. It is of the opinion that some activities being run in the name of the company are harmful to the interest of the company or its members. 120 out of total 650 shareholders of the company have made an application to the Central government to appoint an inspector to carry out investigation.

With reference to the provisions of the Companies Act, 2013, mention whether the shareholders' application will be accepted?

(4 Marks)

- (b) The Board of directors of M/s Aparna Limited, a listed public company, for carrying out the valuation of the Property held by the company as required under the provisions of the Companies Act, 2013 proposes to appoint Mr. Mehta, an individual as the valuer. Referring to the provisions of the Companies Act, 2013, the audit committee is of the opinion that the Board of directors does not have the right to appoint the valuer. Decide.

(4 Marks)

J.K.SHAH CLASSES