



Division A: Multiple Choice Questions

Instructions: All questions are compulsory.

(Total 30 Marks)

Integrated Case Scenario 1

Bright Mills Company Ltd. (the company) was closed and opened several times for one reason or another and finally was closed in March, 2014, However, the proceedings were pending under the Sick Industrial Companies (Special Provisions) Act, 1985. The Bright Mill Mazdoor Morcha, (the trade union) a registered trade union on 14.03.2017, issued a demand notice on behalf of roughly 3,000 workers under Section 8 of the Code for outstanding dues of workers. The company replied to it on 31.03.2017.

The National Company Law Tribunal (NCLT), on 28.04.2017, after considering all the antecedent facts including suits that have been filed respondent and referring to pending with petitions in the High Court of Delhi, ultimately held that a trade union not being covered as an operational creditor, the petition would have to be dismissed.

By the impugned order dated 12.09.2017, the National Company Law Appellate Tribunal (NCLAT) did likewise and dismissed the appeal filed by the trade union and stating that each worker may file an individual application before the NCLT.

The NCLAT, by the impugned judgment, refused to go into whether the trade union would come within the definition of “person” under Section 3(23) of the Code. The NCLAT held that a trade union would not be an operational creditor as no services are rendered by the trade union to the corporate debtor.

1. Whether you endorse the decision awarded by the NCLT and further affirmed by the NCLAT?
 - (a) Yes
 - (b) No
 - (c) Partially true
 - (d) None of the above

2. Whether Trade Union can be treated as ‘Person’ under the Code?
 - (a) Yes, it is treated as Person
 - (b) No, it is not treated as Person
 - (c) It is treated as person only when registered under state act
 - (d) It is treated as person only when company has nominated such trade union

3. In the above Situation what is the maximum time limit within which Bright Mill Mazdoor Morcha can file appeal to NCLAT?
- (a) within 30 days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved
 - (b) within 60 days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved
 - (c) within 45 days from the date decision has been passed by NCLT
 - (d) within 45 days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved
4. When the financial creditor is related to corporate debtor is there any restriction with respect to his representation at the meeting of committee of creditors or voting:
- (a) The related financial creditor shall be restricted with respect to his participation, voting and representation at the meeting of committee of creditors and voting.
 - (b) The related financial creditor shall not be restricted with respect to his representation at the meeting of committee of creditors and voting.
 - (c) The related financial creditor can participate and vote at the meeting of committee of creditors but without any representation.
 - (d) The related financial creditor can participate but not vote at the meeting of committee of creditors by representation.

(8 Marks)

Integrated Case Scenario 2

ABC Pvt. Ltd was promoted by three groups A, Band C. Each group was holding 1/3rd of paid up capital of company. The board of directors comprises of three directors Ajay, Bidur and Chanakya representing the groups A, B and C respectively. The company was engaged in the business of construction of tenements. It had acquired 60 acres of land in the year 1985 for a sum of ₹ 60Lacs. The market value of the land as on 31st March, 2005 is ₹ 6crore. In spite of best efforts by the company, the projects could not be completed and all the projects are in haphazard condition. The company is facing financial difficulties. Recently, Chanakya has started feeling that he is being neglected and is not taken confidence in taking business decisions. Chanakya representing Group C on the board of directors has filed a petition under Secs. 244 for not calling him for the board meetings irresponsible behaviour of Ajay and Bidur leading to financial distress and has claimed a consideration of ₹ 2 crore for

transferring his shares to groups A and B. Another group company of ABC Private Ltd. M/s. City Hospital Private Ltd. has two groups of Directors. A dispute arose between the two groups out of which one group controlled the majority of shares. A very serious situation arose in the administration of the company's affairs when the minority group ousted the lawful Board of Directors from the possession and control of the management of the company's factory and workshop. Books of account and statutory records were held by the minority group and consequently the annual accounts could not be prepared for two years. The majority group applied to the Tribunal for relief under sections 241 of the Companies Act.

1. Chanakya has filed a petition under Secs. 244 for Oppression and Mismanagement . Will he succeed?
 - (a) Yes, If he can prove before the tribunal and submit any evidence leading to oppressive act or gross negligence
 - (b) No, as it is in the Capacity of Director
 - (c) No, as applicant does not satisfy minimum shareholding required for application
 - (d) None of the above
2. Whether Incurring Loss by ABC Pvt Ltd. in above situation ipso facto amount to Mismanagement?
 - (a) Yes , as company is incurring heavy loss
 - (b) Yes, as Chanakya has not called for the meeting
 - (c) No, It can mismanagement only if proved to be gross negligence
 - (d) None of the above
3. Whether in case of City Hospital Private Ltd. the application by majority to NCLT is tenable in nature?
 - (a) Yes, Majority can file an application
 - (b) No , only minority can file an application
 - (c) No, as in above situation it should be filed with Police
 - (d) None of the above
4. Assume in above case in City Hospital Private Ltd. if there is only difference of opinion between two group , will that be a sufficient ground to file application U/S 241
 - (a) Yes, if company has incurred loss due to it
 - (b) No, as it does not amount to oppression and mismanagement
 - (c) Yes, if Minority group is not happy with majority group

(d) None of the above

(8 Marks)

Multiple choice questions (Total 14 marks)

1. Mr. Unfortunate was appointed by proportional representation in HUL Ltd in March 2015. However, he met with an accident in Jan 2017 and there was a casual vacancy at his place. Who can fill the casual vacancy position?

- (a) BOD shall appoint subject to approval at next AGM.
- (b) BOD shall appoint subject to approval at next GM.
- (c) BOD shall appoint subject to approval at next AGM by GM-OR.
- (d) Shall be appointed by GM-OR.

(1 Mark)

2. The auditor of Arc Ltd. attended the meeting of Audit Committee thereof. He made a statement about certain pressing matters about Internal Control weaknesses. In the ensuing resolution of the Board, regarding the fortification of Internal Control through digital means, the auditor claimed he had a special right to vote under Companies Act, as he is the expert on that subject. Is he entitled to vote?

- (a) Yes, Audit Committee is required to allow auditor to vote on matters towards which he has made statements in Committee meeting
- (b) No, the Auditor has no right under Companies Act to vote at such meeting, but has right to make statement thereat.
- (c) Yes, Audit Committee is formed by default with the Auditor as a member
- (d) Yes, Auditor can cast a vote, but only if there is a tie in the number of votes

(2 Mark)

3. Any person aggrieved by the decision of the adjudicating officer, SEBI or recognized stock exchange may file an appeal to SAT within:

- (a) 30 days
- (b) 45 days
- (c) 60 days
- (d) 15 days

(1 Mark)

4. Which of the following is not a condition that is considered by the RBI in case of application for registration or carrying on business by an Asset Reconstruction Company (ARC):
- (a) that the ARC has not incurred losses in any of the three preceding financial years
 - (b) that the directors of ARC have not entered into related party transactions
 - (c) that the directors of ARC have adequate professional experience in matters related to finance, securitization and re-construction
 - (d) That a sponsor of an ARC is a fit and proper person in accordance with the criteria issued by RBI
- (1 Mark)**
5. What is the punishment to the director or officer of the company if they disobey the direction issued by the Registrar under section 207?
- (a) Imprisonment upto 1 year
 - (b) Fine, which shall not be less than ₹ 25000 but which may extend to Rs 100000
 - (c) A and B
 - (d) A or B
- (1 Mark)**
6. Adjudication authority has reason to believe that Mr. B is in possession of proceeds of crime. What is the next course of action to be taken by Adjudicating Authority?
- (a) Arrest Mr. B
 - (b) Serve a notice of not less than 30 days, to indicate source
 - (c) Serve a notice of not less than 45 days to refund
 - (d) Make him pay fine ₹ 10000
- (1 Mark)**
7. Sushant, an editor of Never-ever Magazine, a bi-monthly registered publication magazine, with national circulation, took money from Foreign Source: Is this permissible u/s 3 of FCRA?
- (a) Yes, as it's a magazine and not a registered newspaper
 - (b) No, as no distinction is made between a Magazine or any other publication u/s 3 of FCRA

- (c) Yes, as it is not a daily issue and prohibition applies to daily issues only
- (d) No, as it is a nationally circulated magazine

(1 Mark)

8. For failure to pay penalty u/s 13 of FEMA where such penalty > 1 crore: Civil Imprisonment shall be

- (a) upto 6 months
- (b) upto 1 year
- (c) upto 2 years
- (d) upto 3 years

(1 Mark)

9. The contract which contained the Arbitration Agreement was invalid. Will the Arbitration Agreement be invalidated by this mere fact as well:

- (a) Yes, as it is a part of the agreement to which consent is given
- (b) No, as it is not part of the agreement , as Arbitration agreement shall be made and agreed to separately
- (c) No, as there is 'Doctrine of Separability' which allows both Contracts to perform independently
- (d) None of the above

(1 Mark)

10. Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application for recovery of the balance amount from the borrower to the...

- (a) Debts recovery appellate tribunal
- (b) State government
- (c) Debts recovery tribunal
- (d) Central government

(1 Mark)

11. All of the following are acts of mismanagement except

- (a) where there is serious infighting between directors
- (b) continuation in office after expiry
- (c) company doomed to trade unprofitably
- (d) company is incurring losses

(1 Mark)

12. Which of the following are permitted to present the petition for winding up?

- (a) Creditors
- (b) Contributories
- (c) Company
- (d) All of the above

(1 Mark)

13. From whom does Information Utility get information of assets in which security interest is created:

- (a) Financial Creditor and Operational Creditor
- (b) Corporate Debtor may provide information.
- (c) Insolvency Professionals
- (d) Insolvency Professionals Agencies

(1 Mark)

J.K.SHAH CLASSES

Division B: Descriptive Questions

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

(70 Marks)

Q.1 (a) Mr. Ashish, a technocrat aged 71 years and reputed to be a specialist in reviewing sick companies is being considered to be appointed as Managing Director of Star Limited. The company has been incurring losses for the past several years and its "effective capital" is ₹ 500 crores. Referring to the provisions of the Companies Act, 2013, discuss:

- (i) Can Mr. Ashish Be appointed as Managing Director of the company despite being over 70 years of age? If so, what is the process to be followed to enable this?
- (ii) What is "effective capital" as per Schedule V of the Act?
- (iii) What is the maximum permissible remuneration under the Companies Act, 2013?

(8 Marks)

(b) Hashmukh Tea Limited wants to sell its tea by entering into a contract with the following parties:

- (a) Raksha Bros., a partnership firm in which a director of Hashmukh Tea Limited is a partner,
- (b) RAB Private Limited in which one of the director of Hashmukh Tea Limited is a member,
- (c) Strong Tea Limited in which one of the directors of Hashmukh Tea Limited is director holding 3% of the paid-up capital of Strong Tea Limited. Advise the steps that should be taken by Hashmukh Tea Limited considering the relevant provisions of Companies Act, 2013 for entering into contracts in which the directors are interested.

(6 Marks)

Q.2 (a) (i) State whether the aggrieved party would succeed in obtaining relief from the Tribunal on the ground of oppression where the majority of the Board of directors override the minority directors and the minority directors apply to the Tribunal complaining oppression by majority directors.

(4 Marks)

(ii) Answer the following with reference to a scheme of amalgamation of companies explaining the relevant provisions of the Companies Act, 2013,

- (i) What is the majority required for approving the scheme of amalgamation in a meeting of members of a company called as per directions of the Tribunal? Is the scheme to be approved by preference shareholders?
- (ii) When will the Tribunal order dissolution of the transferor company?
- (iii) At the time of filing of the petition for amalgamation, the object clause of both the transferor and transferee companies does not contain power to amalgamate, 'With reference to the provisions of the Companies Act, 2013, examine the validity of the scheme of amalgamation.

(4 Marks)

(b) (i) State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

- (1) Sunny, a Singer, wants to perform along with associates in London on the occasion of Diwali for Indians residing at London. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose.
- (2) Mr. Bimar wants to get his heart surgery done at United Kingdom. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?

(3 Marks)

(ii) Mrs. Sheela, Managing Director of M/s Infotech Ltd, has been arrested for offence covered under section 447 of the Companies Act, 2013 on a complaint made By the Director, Serious Fraud Investigation Officer. Mrs. Sheela seeks your legal advice as to the conditions under which she can be released on Bail and the role of Special Court in this regard.

(3 Marks)

- Q.3 (a) (i)** M/s Tahir Limited was wound up with effect from 15th March 2018 by an order of the Court. Mr. Akshay, who ceased to be a member of the company from 1st June 2017, has received a notice from the liquidator that he should deposit a sum of ₹ 5,000 as his contribution towards the Unpaid amount on the shares previously held by him. In this context explain whether Mr. Akshay can be called as a contributory, whether he can be made liable and whether there is any limitation on his liability.
(3 Marks)
- (ii)** The management of Gangotri Ltd. was taken by LBV Bank Ltd. (Secured Creditor) complying the provisions of SARFAESI Act, 2002 and appointed two directors. The Board of Director of Gangotri Ltd. duly authorized by its Articles, appointed two alternate directors and the majority of the directors made a declaration required for voluntary liquidation proceedings. A special resolution requiring the company to be liquidated voluntarily by appointing an insolvency professional to act as the liquidator was passed at the general meeting of the company. The Board of Directors and the shareholders passed the resolutions without the approval/consent of Directors appointed by LBV Bank Ltd. discuss the validity of the above resolutions under SARFAESI Act, 2002. Does an unsecured Creditor have recourse to this Act?
(4 Marks)
- (b) (i)** Mr. Hari wilfully gives false information, refuses to give evidence and to sign statement made by him in the course of proceedings under the provisions of Prevention of Money Laundering Act, 2002. Explain the penal provisions and mode of recovery of fine or penalty enumerated under the said Act.
(3 Marks)
- (ii)** Damage Ltd, the Company wanted to suspend Mr. Z , the CFO of the company during the pendency of an investigation being conducted under the provisions of the Companies Act, 2013 on the order of Tribunal. The company approached the Tribunal on 3rd January, 2017 for the proposed action. The company on 15th February, 2017 passed an order of suspension without waiting for the orders from Tribunal Comment upon the action taken by the company with reference to the relevant provisions of the Act.
(4 Marks)

- Q.4 (a) (i)** An investor has complained to SEBI that he has not received the payment due to him from the stock broker registered with Udaipur Stock Exchange Association Ltd. The complainant has requested SEBI to take appropriate action against the stock broker. State with reference to the provisions of Securities and Exchange Board of India Act, 1992 the action that can be taken against the stock broker, the procedure to be adopted and the factors that will be taken into account of SEBI.
(3 Marks)
- (ii)** The Executive Committee of a recognized Stock Exchange desires to transfer certain duties and functions of a clearing house to be a recently set up Clearing Corporation, incorporated as a company under the Companies Act, 1956. Examining the provisions of the Securities Contracts (Regulation) Act, 1956. (i) State the purpose for such transfer of duties and functions can be made to Clearing Corporation. (ii) What are the procedure to be adopted for such transfer of duties and function.
(3 Marks)
- (b) (i)** State under what circumstances Government can cancel the certificate of registration granted to a person under FCRA.
(2 Marks)
- (ii)** State the list of assets which are included and excluded in liquidation estate.
(6 Marks)
- Q.5 (a) (i)** Mr. Raj, a director of POL Ltd., submitted his resignation from the post of director to the Board of Director on 30th June, 2014 and obtained a receipt therefore on the same day. The Board of Directors of POL Ltd. neither accepted the resignation nor did it file Form DIR 12 with the Registrar of Companies. You are required to state whether Mr. Raj ceases to be the Director of POL Ltd. and if yes, since when?
(4 Marks)
- (ii)** What are the requirements of a valid arbitration agreement
(4 Marks)

- (b) (i) In the annual general meeting of Akash Ltd, while discussing on the matter of retirement and reappointment of director Mr. Kishore, allegations of fraud and financial irregularities were levelled against him by some members.

This resulted into chaos in the meeting. The situation was normal only after the chairman declared about initiating an inquiry against the director Mr. Kishore, however, could not be re-appointed in the meeting. The matter was published in the newspapers next day.

On the basis of such news, whether the court can take cognizance of the matter and take action against the director on its own?

Justify your answer with reference to the provisions of the Companies Act, 2013.

(2 Marks)

- (ii) Xing Limited, a company incorporated in Beijing proposes to issue prospectus offering its securities in India. The Company has no established place of business in India. The officer in charge of the issue of the prospectus in India seeks your opinion regarding the provisions relating to registration of the prospectus under the Companies Act, 2013. List out the documents required to be enclosed with the prospectus.

(4 Marks)

- Q.6 (a) Explain the meaning of the terms "Non-performing Asset", "Asset Reconstruction" and Financial Asset used in SARFAESI Act, 2002.

(6 Marks)

- (b) State the eligibility to become Registered Valuer along with qualifications and experience.

(8 Marks)