MOCK TEST PAPER 1

FINAL COURSE GROUP I

PAPER 4: CORPORATE AND ECONOMIC LAWS

ANSWERS

DIVISION A: Answers to multiple choice questions (Total of 30 marks)

Case Study 1

1. (a)

2. (b)

3. (d)

4. (d)

Case study 2

5. (c)

6. (b)

7. (c)

8. (b)

9. (a)

Independent MCQS

10. (b)

11. (c)

12. (a)

13. (b)

14. (c)

15. (d)

16. (d)

17. (c)

DIVISION B: Descriptive Answers (70 Marks)

1. (a) Section 185 of the Companies Act, 2013 contains provisions which impose restrictions on the loans, etc. being given to directors, etc. According to the provision:

As per sub-section (1), a company is not permitted to advance any loan, or to give any guarantee or provide any security in connection with any loan taken by,—

(i) any director of company, or of a company which is its holding company or any partner or relative of any such director; or

(ii) any firm in which any such director or relative is a partner.

Further sub-section (3) states that above provision shall not apply:

(a) where any loan is given to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any such scheme which is approved by the members by a special resolution.

(b) where a company in the ordinary course of its business:

- provides loans or gives guarantees or securities for the due repayment of any loan; and
- in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan.

Accordingly, following are the answers to the stated problems:

(i) In the first case it would violate the section 185(1) of the Companies Act, 2013. Truth Ltd. is not permitted, to advance any loan, or to give any guarantee or provide any security in connection with any loan taken by Mr. A (director) of the company.

(ii) In the second case, as per section 185(3), restrictions imposed in section185(1), will not apply to giving of loan to Mr. B, the whole time director if its given as a part of the conditions of service extended by the company to all its employees.

(iii) In third case, if it is loan given to a company in the ordinary Course of business for due repayment of any loan and lending rate is not less than the bank rate prescribed by the Reserve bank, the restriction imposed under section 185(1) will not apply to such transactions.

(b) (1) Section 164 talks about the disqualifications of directors under the Companies Act, 2013. In specific, sub-section (2)(b) of the said section, no person who is or has been a director of a company which has failed to pay any dividend declared and such failure continues for one year or more, shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of 5 years from the date on which the defaulted company fails to do so.

Mr. futuristic, a director on the board of ABC Ltd., had offer of appointment in other company PQR Ltd. He wishes to take up the post in the other company. In view of above stated provision, since Mr. futuristic was a director in a company which failed to pay dividend even after 1 year of declaration and so was a defaulted company. Therefore, he cannot be appointed in PQR Ltd.

(2) Any director who is in receipt of any commission from the company and who is managing or Whole time director of the company shall not be disqualified from receiving any remuneration of commission from any holding or subsidiary company of such company subject to its disclosure by the company in the Board's report as per section 197(14) of the Companies Act. However subject to the provisions of sections I to IV of schedule V of the Companies Act, 2013, a managerial person shall draw remuneration from one/both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is managerial person. Accordingly, Mr. Talented is advised to check that it does not exceed the higher maximum limit admissible in any of the companies i.e. either holding or subsidiary.

2. (a) (i) Statement that Company is in Liquidation [Section 344 of the Companies Act, 2013]

(1) Statement of winding up: Where a Company is being wound up, whether by

- the Tribunal or
- voluntarily,

every invoice, order for goods or business letter issued-

- by or on behalf of the Company or

- by a Company Liquidator of the Company, or
- by a receiver or
- by the manager of the property of the Company,

being a document on or in which the name of the Company appears, shall contain a statement that the Company is being wound up.

(2) **If a company contravenes the above provisions**, the company and every officer of the Company, the Company Liquidator and any receiver or manager, who willfully authorises or permits the non-compliance, shall be punishable with fine which **shall not be less than fifty thousand rupees but which may extend to three lakh rupees.**

In the instant case, the Auditor would have advised accordingly.

(ii) According to section 279 of the Companies Act, 2013, when a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:

Provided that any application to the Tribunal seeking leave under this section shall be disposed off by the Tribunal within sixty days.

Nothing as stated above, shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

According to Section 325,326,327 of the Companies Act, 2013, in case of winding up of a company, the workmen's dues shall be paid in priority to all other debts ranking Pari passu with the secured creditors.

As per the facts of the case, the High court has already passed a winding up order of the company. Hence, the workmen can appeal against the winding up order but only with the leave of Tribunal and subject to the terms imposed by the Tribunal. Further, the dues / interests of the workmen shall be protected in priority as workmen's dues shall be paid in priority to all debts ranking Pari passu with secured creditors.

Hence, even though the dues of secured creditors are more than workmen's dues, priority is given to workmen's dues as per provisions of the Act.

(b) According to **Section 36** of the Insolvency and Bankruptcy Code, 2016 (the Code) for the purposes of liquidation, the liquidator shall form an estate of the assets, which will be called the liquidation estate in relation to the corporate debtor. The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

Exceptions

In terms of Section 36(4) of the Code, the assets owned by a third party which are in possession of the corporate debtor, shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation. These assets include other contractual arrangements which do not stipulate transfer of title but only use of the assets.

In the given instance, Crown Industrial Conveyors Limited has advanced a loan of ₹ 1 crore to M & Co. Private Limited. Its (M & Co. Private Limited) office was functioning in a rented house property belonging to Mr. M, the Managing Director.

On liquidation of M& Co. Private Limited (the Corporate debtor), Crown Industrial Conveyors Limited, the Financial Creditor, intends to attach the property of Mr. M as a liquidation asset.

In line with above stated exclusion, the property in which M & Co. Private Limited was operating its office on rent belonged to Mr. M i.e. third party.

Conclusion

Therefore, Crown Industrial Conveyors Limited, the lending Company, cannot attach the property of Mr. M as it cannot be included in the liquidation estate assets and shall not be used for recovery in the liquidation.

3. (a) Specimen Board Resolution: Investment in Equity Shares

Resolution passed at the meeting of the Board of Directors of Speed Cycles Limited held at its registered office situated at _____ on _____ (day) at _____ A.M.

"Resolved unanimously that pursuant to provisions of Section 186(2) of the Companies Act, 2013, the company be and is hereby authorized to invest in _____ equity shares of ₹ ____ each of Brakes and Gears Limited, the investment in addition to other investments made to date in the aggregate being within the limits prescribed under the said section."

"Resolved further that Mr. _____, the Managing Director of the Company be and is hereby authorised on behalf of the Board to sign /execute the necessary documents in this connection."

Sd/-

Board of Directors

Speed Cycles Limited

(b) Sitting Fees to Directors [Section 197(5) of the Companies Act, 2013]

A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board subject to the conditions imposed by **Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014** as under:

- The sitting fees shall not exceed one lakh rupees per meeting of the Board or committee thereof. (As per Rule 4)
- The sitting fee payable to the Independent Directors and Women Directors shall not be less than that payable to other directors. (As per Proviso to Rule 4)

Accordingly, increasing the sitting fees of Mr. Z and Mr. L is within the limit prescribed under the said Rule 4. However, maintaining the same sitting fees for the Mr. X and Mrs. Y is not valid in line with the requirement to the stated provision i.e., it shall not be less than that payable to Mr. Z and Mr. L.

Therefore, the decision of the Board of Directors to increase the sitting fees of few directors and maintaining the same sitting fees for remaining directors shall be deemed to be invalid.

(c) As per **Section 2(v)** of the Foreign Exchange Management Act, 1999, **"Person Resident in India"** means:

a person residing in India **for more than 182 days** during the course of the **preceding financial year** but does not include—

(A) a person who has gone out of India or who stays outside India, in either case—

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than:

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

In line with the above definition, Residential status of Milap for the financial years will be as follows :

(i) For FY 2020-2021: As in the preceding year 2019-2020, Milap resided for 182 days which is not in compliance with the requirement of number of days of her stay (for more than 182 days). Here, residential status of Milap is a Person resident outside India.

(ii) For FY 2021-2022: In the preceding year 2020-2021, Milap has not resided in India as she went to UK on 1st April 2020 and returned on 1st July 2021. In this case also, the residential status of Milap is a person resident outside India.

4. (a) According to Section 382 of the Companies Act, 2013,

- every foreign company shall conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;
- if the liability of the members of the company is limited, cause notice of that fact—

  (I) to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and

  (II) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situated.

After taking into account the provisions of Section 382 of the Companies Act, 2013, the following are the lapses by the company:

(i) The company has exhibited the name of the company in English but it has not displayed the name of the Country where it was incorporated, name of the country. Further, it has not displayed both the facts in the local language or one of the languages in general use in the locality in which the office or place is situated. i.e. Baroda.

(ii) Further the company is one where the liability of members is limited. The fact that the members liability is limited has not been conspicuously exhibited on the outside of every office or place i.e. in Baroda, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality i.e. Baroda

The above lapses would have given rise to the notice from the Registrar.

(b) A dormant Company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the Register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.

According to Rule 6 of the Companies (Miscellaneous) Rules, 2014, a dormant company shall have a minimum number of 3 directors in case of a public company, 2 directors in case of a private company and 1 director in case of a One Person Company.

According to the Rule 7 of the Companies (Miscellaneous) Rules, 2014, a dormant company shall also continue to file the return / returns and change in directors in the manner and within the time specified in the Act, or whenever the company allots any security to any person or whenever there is any change in the directors of the company.

Under the provisions, a dormant public company should have minimum 3 directors. The reduction of number of directors to 2 is not appropriate.

Hence, by taking into account the above provisions, reduction in the number of directors to 2 and not filing a statement with Registrar regarding change of Directors by Jackpot Limited is not appropriate.

(c) (i) Legal position regarding valuation of shares

For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

In view of the above, Hill Limited cannot convert ECB into shares at par value. It has to issue shares to the borrower at fair value at the conversion date (i.e. based on applicable pricing guidelines prevailing on the date of conversion).

Reporting requirements

Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:

In case of **full conversion of ECB** into equity, the reporting to the Reserve Bank will be of the entire portion, reported in Form FC-GPR. While reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.

(ii) (1) Contributions made by a citizen of India living in another country (i.e., Non-Resident Indian), from his personal savings, through the normal banking channels, is not treated as foreign contribution. However, while accepting any donations from such NRI, it is advisable to obtain his passport details to ascertain that he/she is an Indian passport holder.

(2) The position in this regard as given in Section 4(e) of FCRA, 2010 and Rule 6 of FCRR, 2011 are as under: Subject to the provisions of section 10 of the FCRA, 2010, nothing contained in section 3 of the Act shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him from his relative. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in Form FC-1 within thirty days from the date of receipt of such contribution.

5. (a) According to **Section 231** of the Companies Act, 2013,

(1) Power of tribunal to enforce the order: Where the Tribunal makes an order under Section 230 sanctioning a compromise or an arrangement in respect of a company, it—

(a) shall have power to supervise the implementation of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as

it may consider necessary for the proper implementation of the compromise or arrangement.

(2) Winding up order by tribunal: If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under Section 273.

As per the facts of the question and provisions of law, the Tribunal has the right to modify, monitor the implementation and order for winding- up of company in case the scheme is not implemented satisfactorily.

Thus, the objection raised by the directors on the decision of the Tribunal modifying the scheme and winding- up of the company, is not correct**.**

(b) Section 185 of the Companies Act, 2013 contains provisions which impose restrictions on the loans, etc. being given to directors, etc.

Accordingly, a company is not permitted directly or indirectly to advance any loan to

(a) any director of the company or of a company which is its holding company or any partner or relative of any director or

(b) any firm in which director or relative is a partner.

As per the Notification No. G.S.R 464(E), dated 5th June 2015 as amended by Notification No. G.S.R 583(E), dated 13th June 2017, Section 185 shall not apply to a private company which means that loan to directors may be provided subject to following conditions:

(a) In whose share capital no other body corporate has invested any money;

(b) If the borrowings of such a company from banks or financial institutions or anybody- corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower, and

(c) Such company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.

The above exemption is applicable to a private company if it has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.

Here in the given case, requirement given in clause(a), and no commission of default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar, are met with, However, as per clause (b), borrowings of B Private Limited from banks or financial institutions is ₹ 49 crore which is more than twice of its paid-up share capital (i.e. ₹ 20 core X 2 = ₹ 40 crore).

Hence, the contention of Mr. L that loan shall not be provided to Mr. B is correct. Accordingly, as the exemption is not applicable to B Private Limited, the proposal of providing a loan of ₹ 50 Lakh to its director Mr. B, by B Private Limited is invalid.

(c) (i) Section 8(1) of the Arbitration and Conciliation Act, 1996 provides that a judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies. Once the parties have agreed to arbitrate their matter, neither of the parties can unilaterally proceed to court to litigate that matter. Any party attempting to do that would be referred to arbitration, if the other party so requests.

Therefore, the Court may ask to parties to submit the original copy of the arbitration agreement and after satisfying that arbitration agreement exist, it may refer the parties to the arbitration.

(ii) Section 10(1) of the Arbitration and Conciliation Act, 1996 provides that the parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

Yes, they can decide to determine the number of arbitrators provided that such number shall not be an even number.

6. (a) According to Section 7(3) of the Securities and Exchange Board of India Act, 1992, all questions which come up before any meeting of the Board shall be decided by majority vote of the members present and the Chairman or the presiding member will have a second or casting vote, in the event of equality of votes.

Section 7A, provides that any member-

- who is a director of a company, and
- who as such director has any indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board,

shall, disclose (as soon as possible after relevant circumstances have come to his knowledge) the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter.

As per facts of the question and provision of law, the matter ought to be decided excluding Mr. A (considering Section 7A).

Thus, the matter should have been decided by the remaining 8 members. Further the chairman has a second or casting vote which he can exercise in case of equality of votes. Hence in the given case if there is equality of votes the Chairman will cast his second vote and the matter will be decided accordingly.

In terms of section 7A, any member who falls within the purview of this section, cannot take part in any deliberation or decision of the Board with respect to that matter. Hence, Mr. A shall not take part in the proceedings related to PQR Limited, whether he is a part time member or whole time member.

(b) (i) According to Regulation 31(1) of the SEBI (Listing Obligations and Disclosure Requirements), a listed entity (here, PR Limited) shall submit a statement showing holding of securities and shareholding pattern separately for each class of securities, within 10 days of any capital restructuring of the listed entity resulting in a change exceeding 2% per cent of the total paid-up share capital.

(ii) The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors at least 2 working days in advance, excluding the date of the intimation and date of the meeting where the proposal of buyback of securities is to be considered.

(iii) As per Regulation 46(3), the listed entity shall update any change in the content of its website within 2 working days from the date of such change in content.

(iv) Record Date or Date of Closure of Transfer Books [Regulation 42(2)]: The listed entity shall give notice in advance of at least 7 working days (excluding the date of intimation and the record date) to stock exchange(s) of record date (i.e. before record date) specifying the purpose of the record date.

(c) (i) Section 12 of the Insolvency and Bankruptcy Code states that any Corporate & Insolvency Resolution Process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate the process.

However, the National Company Law Tribunal (NCLT) may on an application made by the resolution professional, under a resolution passed by the Committee of Creditors, by a vote

of 66% of voting shares, after consideration provide one extension which shall not extend more than 90 days.

Second proviso to Section 12 (3) states that the corporate insolvency resolution process (CIRP) shall compulsorily be completed within 330 days from the insolvency commencement date including any extension of the time period of corporate insolvency resolution process granted under Section 12 and also the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

(ii) Establishment of Appellate Tribunal

According to section 25 of the Prevention of Money Laundering Act, 2002, the Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

Appeals to Appellate Tribunal

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act may prefer an appeal to the Appellate Tribunal.

The appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Adjudicating Authority is received and it shall be in such form and be accompanied by prescribed fees. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

Appeals to High Court

The Act also provides further appeal. According to Section 42 any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the provisions of the Act explained above, the company is advised to prefer an appeal to Appellate Tribunal in the first instance.