

Your overall performance is good. Revise all your previous topics at least once in a week rather allocate a day in a week for revision and evaluating your performance. This will help you memorize topics and bind out shortcomings in your preparation.

Division A - MCQ

Q. 1 T.M. 90/100

- 1) (b)
- 2) (b)
- 3) (b)
- 4) (b)
- 5) (c)

10 marks

That's the correct answer

Q. 2

- 1) (c)
- 2) (a)
- 3) (a)
- 4) (b)
- 5) (c)

10 marks

General MCQ's

- 1) (a)
- 2) (c)
- 3) (a)
- 4) (c)
- 5) (d)
- 6) (b)
- 7) (d)
- 8) (b)
- 9) (b)
- 10) (b)

That's commendable!

10 marks

Division B : Solution to Q1

- (a) (ii) As per sec. 196 and sec. 197, appointment of MD, & WTD and no company shall appoint or continue the employment of any person as MD, WTD or manager who is below the age of 21 years or has attained the age of 70 years, unless the appointment of a person who has attained the age of 70 years has been made by passing a special resolution and explanatory statement has been annexed indicating the justification for appointment of such person.

This question has been attempted correctly;

5.5 marks

Further, where no special resolution has been passed by the company but the votes cast in favour of the motion exceeds the votes if any, cast against such appointment and the central government is satisfied with the application made by the company that the such appointment is for the betterment of the company and is beneficial to the company, the appointment of such person who attains the age of 70 years may be made.

Hence the appointment of Mr. Chande as managerial person in office of WTD in Shining Star Limited is valid.

- (ii) As per sch. V of the Companies Act, 2013, the effective capital refers to the aggregate of the paid up share capital exclusively amount application money pending allotment, credit in share premium account, Reserves & Surplus (excluding the revaluation reserves), long term borrowings repayable after one year as deducted by the aggregate of investment in case the entity is engaged in principal business of acquisition of shares, debentures or other securities, preliminary expense not written off (debit balance of Preliminary Expense) and accumulated losses present in Financial Statement.

Hence,

effective capital : Paid up share capital reduced by share premium
money power allotment + General reserves (excluding
Revaluation reserves + long term borrowings (-))
Accumulated losses - Investments
 $= (215 - 15) + (170 - 20) + 200 - 10 - 40$
 $= \underline{\underline{500 \text{ crores}}}$.

(iii) As per sec. 197: Managerial remuneration : In case company
is non making or inadequate profit, if the effective capital
of the entity as determined above is more than or equal to
₹250 crores, then the yearly remuneration of such managerial
person shall not exceed by ₹120 lakhs plus 0.01% of the
effective capital in excess of ₹250 crore.

Hence the maximum remuneration shall be = ₹120 lakhs + $(500 - 250) \times 0.01\%$

$$= 120 \text{ lakhs} + 2.5 \text{ lakhs}$$
$$= \underline{\underline{122.50 \text{ lakhs}}}.$$

b) (i) As per sec. 1687 of the Companies Act, 2013, the office of a
director of the company shall become vacant in case, the director
has been appointed as a director by virtue of his holding any
employment in the holding, subsidiary or associate company,
please to hold such office or other employment in that company.

Further, If a person, functions as a director even when he
knows that the office of director which was held by him
has become vacant on account of any disqualification specified,
then he shall be punished with the fine not less than ₹ 100,000
but which may extend up to ₹ 500,000 as the case may be.

In the given case, holding of directorship of Mr. Ram in X Ltd. after failing to hold office as MD in ABC Ltd is invalid as per sec. 167, as Mr. Ram was appointed as director in X Ltd. due to appointment of managerial personnel in its holding company ABC Ltd. and office of director in X Ltd. shall become vacant due to cease of its holding of his office or employment in ABC Ltd.

mention panel provision in detail

(ii) As per sec. 168 of Companies Act 2013, A director on his dissolution may resign from his office of his directorship by giving a notice in writing or electronically to the company and intimate the registrar within 30 days from his resignation. The resignation shall take place effect from the place date on which the notice is received by the company or the date specified in the notice, whichever is later.

In the given case, Resignation shall effect from the day on

~~As per section 172 of the Companies Act, 2013, if a company contravenes in compliance to the said provision, the company and every officer of the company who is in default shall be liable to a penalty of Rs. 50,000, and in case of continuing failure, with a further penalty of Rs. 500/day during which such failure continues, subject to a maximum of Rs. 3,00,000 in case of a company and Rs. 1,00,000 in case of an officer who is in default.~~

(c)

As per sec 165: number of directorship: no person shall hold office as director, including any alternate directorship in more than 20 companies at a time out of which the maximum number of public companies in which a person can be appointed as director shall not exceed 10. companies. Further, Private

3.5 marks

It is apparent that you've been focusing

company which is either holding or subsidiary company of public company shall be included in the limit of 10 public companies in which a person can be appointed as director

(i) In the given case, Ms. Rose was appointed as a non-executive director in Brown Limited on 10 March 2017 and she was

already holding directorship in 10 companies including 10 public companies further she is also a whole time cost accountant in practice.

Since Ms. Rose is already a director in 10 public companies, her appointment in Brown Limited as director is not valid as it will cross the threshold limit of ^{public} 10 companies.

- (ii) In the given case, Ms. Jasmine holds positions as director in eight public companies which includes as MD in two companies. In addition she also holds alternate directorship in three companies and independent directorship in three subsidiary of Brown Limited which is assumed to be private companies otherwise this only will cross the threshold limit of 10 public companies. Further these three subsidiary companies of Brown Limited will be considered as directorship in three more public companies.

Hence, directorship in public companies of Ms. Jasmine will be 11 which is not valid as per the law.

Solution to Q.2

- (a) As per sec. 344 of the companies Act, 2013, where a company is being wound up, whether by,
- the tribunal or,
 - voluntary basis

3.5 marks

Then for every letter, invoice, purchase order issued to received or by or on behalf of the company or the company liquidator appointed, shall contain a statement that the company is being wound up.

Further if any company contravenes the above provision of sec. 344, the company and every officer of the company, liquidator of the company shall be punished with fine which shall not be less than fifty thousand rupees but which may extend upto three lakh rupees.

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

- (b) As per sec. 210 of the companies Act, it allows investigation into affairs of a company, where the central government is of the opinion that it is necessary to investigate into affairs of the company.

3.5 marks

- on intimation of a special resolution passed by the company that the affairs of the company needs to be investigated or
- On the receipt of a report of the registrar or
- In public interest

Refer to the same strategy in your exam.

In the given case, since the special resolution has not been passed stating that the affairs of the company needs to be investigated hence the application will not be accepted, though the 450 members holding 16% of the paid up value of the shares of the company have made an application to the C.G. to carry out the investigation. It will have no impact that 100 members reporting 4% of the paid up capital had withdrawn the application due to non-passing of the special resolution.

mention Schedule III of the FEMA

(c)

As per the Foreign Exchange Management Act, 1999, foreign exchange may be released for studies abroad & medical treatment upto a limit of US \$ 250,000 without any prior permission of the RBI.

2 marks

Conceptually well attempted,

Further, it can be withdrawn beyond that if it is required by a medical institute for medical expense. In the given case, Mr. T Raghava has secured admission in a reputed and recognised university outside India. After arrival in Germany, he has gone ill and wants medical treatment failing which he desires to apply to the Govt. of India for availing the additional remittance beyond the limit approved for foreign currency exchange facility.

Therefore, as per the above explained provisions Mr. T. Raghava can draw foreign exchange exceeding USD \$ 250,000 for medical treatment.

d)

ECB facility for startups:

An entity recognized as a startup by the central government of India are eligible to raise external commercial borrowing under automatic route with a minimum average maturity period of 3 years.

2.5 marks

You did this question accurately

Further the borrowing can be in a form of loans or non-convertible, partially convertible or optionally convertible preference shares and lender shall be a resident of a FATF compliant country. The borrowing should be denominated in convertible currency or in Indian denominated currency or combination of both. However, in case of INR borrowing, the non-resident lender, shall transfer the borrowings through SWAPS, through ADI policy & banks in India, which will be limited to USD 3 million or equivalent per financial year either as stated above in INR or any freely convertible currency or combination of both.

Solution to Q.3

3 marks

(a)

As per sec. 251, where it is found that the company has filed an application to the registrar for removing the name of the company from registration of companies with the object of evading the liabilities of the company or with the intention to defraud the creditors or to defraud any other person or the company shall be jointly and severally liable to any person or persons who has incurred loss or damage and shall be punishable for fraud as per sec. 447 and may also be recommended by the registrar for prosaction of such person.

Further, any person aggrieved by an order of the registrar, notifying a company as dissolved u/s 248, can file an appeal to the tribunal within a period of three years from the date of the order of the registrar and if tribunal is of the opinion that the removal of the name from the ROC is not justified

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar to, the company and all the persons concerned.

b)

i) As per sec. 2 of the Companies Act, 2013, foreign company means any company or a body corporate incorporated outside India mention relevant section no. of business in India whether by itself or a person representing physically or through electronically and concludes business activity in India in any other manner.

3 marks

In the given case, Kids Toys Limited, a Japanese company has established a place of business in India and also carries on business in India hence the company shall be deemed to be a foreign company.

The results were worth all your hard work.

ii) According to sec. 379 of the Companies Act, 2013, In a case where not less than 50% of the paid up share capital with or without equity or preference or partly paid equity or preference of a company is held

by one or more citizens of India or by one or more companies or
body corporate incorporated in India or by one or more citizens
of India and one or more companies incorporated in India, such
company shall comply with the provisions of the legal provisions
for companies incorporated outside India and such other provision
of this Act as may be prescribed with regard to the business
carried on by it in India as if it were incorporated in India.
since in the given case, ^{10% of} share capital held by Indian
citizen, 20% of equity share capital is held by Tamilia and
20% by Smart Toys Ltd. an Indian Non-Banc company and in aggregate
50% of the paid up share capital hence Lekha Toys Limited,
shall comply with the provisions of chapter XXII of ~~the~~ Act
with respect to business carried by it in India as if it were a
company incorporated in India.

(c) As per section 5 of the Prevention of Money Laundering Act, 2002, the
director or any officer who provisionally attaches any property on
suspicion that the money is derived from the proceeds of the
crime shall within a period of 30 days from such attachment
file a complaint before the adjudicating authority stating the fact
of such attachment - **2.5 marks**

This has been profoundly answered by you

Further as per section 8 of the PMLA 2002, where the
provisional order of the attachment has been made and confirmed,
the director or any other officer as mentioned above shall take the
possession of the above attached property in such a manner as prescribed.
Hence the provisional attachment on the book issued by the
ED officer is in accordance with the law.

d)

As per sec. 38 of the PMLA, 2002, if the members of a bench contrary of two members differ in an opinion on any matter or any point, then they shall make a reference to the chairman who shall either hear the point or points or refer the same to the third member of the appellate tribunal and such points shall be decided as per the majority of the members of the appellate tribunal who has heard the case.

3 marks

This exhibits commendable enhancement

In the given case, & since the between the three the majority decision was that the attachment of Rajan's property was lawful and enforceable and is in line with the above provision explained the contention of the Rajan that the matter should be decided by the chairman with his casting vote and not by other members of the appellate tribunal is not valid.

solution to Q4

(a)

(i) As per Sec. 5 of the SEBI Act, 1992 the chairman may hold office for a period of 5 years subject to maximum age of 65 years and can be reappointed by the central government subject to maximum age of 65 years.

4 marks

You're truly mastering this

In the given case Mr. A aged 65, has just completed his three year term of the office and his office has become vacant.

Good attempt the union government is of the opinion that Mr. A is a person with specialized knowledge in the area of law, finance and appoints him as chairman for another period of 3 years.

Hence, the appointment of Mr. A as the chairman to the board of SEBI by union government is not valid.

(ii)

As per Sec. 8 of the SEBI Act, 1992 following reasons make not invalid any act or proceeding of the board:

(a) Any defect in the constitution of the board

(b) Any irregularities in the procedure of the board not affecting the merits of the case

(c) Any defect in the appointment of any person or member of the board.

Hence the point of the resolution altering the bylaws of the stock exchange by SEBI is valid as per above points (a) and (c) and violation of the stock exchange regarding the alteration on the ground that the appointment of one of the directors in board. was defective is not valid.

(b)

(i) As per regulation 17 the company should have minimum mandatory combination of executives as well as non-executive director with not less than 50% of director consist of non-executive director. Hence in case of Arrows well limited ~~therefore educational use~~ should not be less than 6 non-executive director.

You're progressing towards your target

(II) As per regulation 17, in case where the chair person of the BOD is a non-executive director, then at least $\frac{2}{3}$ rd of the board of directors shall comprise of independent director, which in the given case shall be 4 ($12 \times \frac{1}{3}$).

(III) As per regulation 17, in case where the company does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent director which in given case shall be 6 ($12 \times \frac{1}{2}$).

(IV) As per regulation 17, in case where the regular non-executive director chairperson is a promoter of the listed entity or it's related to any promoter or person occupying management position at the level of board of director or at one level below the board of director at least half of the BOD shall consist of independent director, which in the given case shall be 6 ($12 \times \frac{1}{2}$).

(C) (i) As per Sec-7 of the FCRA, 2010, No person who is registered and granted certificate or has obtained prior permission under this act and receives any foreign contribution shall transfer such foreign contribution to any other person **2.5 marks**

Hence in the given case, an organization can not carry out the above proposal of to transfer 10% of the donation to Home for aged society an unregistered person done,

You have great knowledge about this question. Well done,

(ii) As per Sec-8 of the FCRA, 2010, any foreign contribution shall not be used for any activity or investment that has an element of risk of appropriation or depletion of the original investment linked to market forces including investment in shares or in mutual funds or participation in any scheme that promises high return like investment in chitfunds or similar ones not linked to the declared objects of the organization.

Hence in the given case, organization can not carry out the above proposal to invest portion of the donation in chits promising high returns.

You have good conceptual understanding of this question.

2.5 marks

(d) In the given case, a common arbitration agreement was framed by ABC Pvt. Ltd. in case of disputes if arises under any contract. According to the term of an agreement, any question, claim, right, matter, thing, whatsoever, in any way arising out of or relating to the contract design, drawings, specifications, estimates, instructions or order, or those condition or failure to execute the same whether arising during the process of the work or after the completion, termination or abandonment thereof, the dispute shall, in the first place, be referred to the chief engineer who has jurisdiction over the work specified in the contract. The chief engineer shall within a period of ninety days from the date of dispute being into the notice, give written notice of his decision to the contractor. Chief Engineer's decision shall be final and as per the requirement of a valid arbitration agreement, parties to the arbitration agreement must agree that the determination of their substantive rights by a neutral third person acting as the arbitral tribunal would be final and binding upon them.

Since as per the above provision, the chief engineer, is not a natural party to the arbitration agreement and has no control over the work specified in the contract, so the arbitration agreement is not valid.

Solution to Q.5

3.5 marks

You have good conceptuality!! You can score good marks easily.

(a)

As per the Sec. 301 of the Companies Act, 2013, tribunal at any time before or after passing a winding up order, if it finds that a contributory or a person having property " papers or account of the company in his possession is about to leave India or otherwise to abscond to avoid examination of books of account in re. the affairs of the company then the tribunal may order

- The contributory to be detained until such time as the tribunal may order
- His books and papers and movable property to be seized and kept safely until such time as the tribunal may order.

Hence in the given case

- (i) The tribunal's order for detention of contributory disallowing him to leave India is valid
- (ii) Yes, it is correct from tribunal's point to arrest and seize books of account from the person planning to abscond to avoid examination of books of account in re. the affairs of the company.

(b)

As per sec. 245 of the Companies Act, 2013, an application can be filed or any other action may be taken by any person, group of persons or any association of persons representing the person affected or aggrieved by any act or omission. Further, as per sec. 432, any party to any proceedings or appeal before the tribunal or appellate tribunal as the case may be may appear or authorize one or more chartered accountant or company secretaries or cost accountants or legal practitioners as the case may be to present his cause before the tribunal or appellate tribunal.

3 marks

You have correctly described this.

Hence as per sec. 245 and sec. 431, the appointment of Mr. Fair is valid as regards to the filing of the application before the tribunal in the light to the provision of the Companies Act, 2013.

5.5 marks

You have done the all concept nicely..well done

(i)

As per the Sec. 421 of the Companies Act, 2013, any person aggrieved by an order of the tribunal may prefer an appeal to the appellate tribunal. Every appeal against the order of tribunal shall be filed within a period of 45 days from the date on which a copy of the order of tribunal is made available to the aggrieved person. However the appellate tribunal may allow an appeal after the expiry of the said period of 45 days from the date on which a copy of the order is made available to the aggrieved person but within a further period not exceeding 45 days. If the tribunal is satisfied with the reasonable cause that prevented the appellant from filing the appeal within that period.

Further no appeal shall lie to the appellate tribunal from an order made by the tribunal without the consent of the parties.

(ii) Since in the given case, the appeal was filed on 6th June, 2018 before the NCLAT and the company pleaded for condonation of delay as per above said provision, the appeal should have been filed by the aggrieved person before the NCLAT by 19th May 2018 (4th April 2018 + 45 days).

Further even though the appeal would have been admitted on the grounds that the order of NCLT was passed without the consent of the parties but the appeal was not filed within the prescribed limit and the delay of condonation can not be given as the strike started in the company after 45 days i.e. 22nd May 2018, 3 days later from the prescribed time limit hence the appeal was NOT PROVED by the sufficient cause from filing the appeal and the proposed appeal by SOKY MINERALS LTD. will not be admitted by the NCLAT.

(ii) As stated above the maximum period allowed for condonance is 45 days if the appellate tribunal is satisfied that the aggrieved or the appellant was prevented by sufficient and reasonable cause from filing the appeal within that period.