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Answer Paper	
Corporate & Economic Laws	Duration: 75
Details: Test – 4	Marks: 40

Instructions:

- All the questions are compulsory
- Properly mention test number and page number on your answer sheet, Try to upload sheets in arranged manner.
- In case of multiple choice questions, mention option number only Working notes are compulsory wherever required in support of your solution
- Do not copy any solution from any material. Attempt as much as you know to fairly judge your performance.

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ANS-1

(i) Some applicants consented to become shareholders of a company on the condition that their suggestions should be included in the memorandum and articles of association. Their suggestions, however, were not carried out by the promoters but the applicants signed usual applications for shares allotted to them and thereby become shareholders of the company. The company went into liquidation. In East Bengal Sugar Mills Ltd., it was held that it was not open to shareholders to object subsequently to their being shareholders of the company on the ground that the condition had not been fulfilled.

(ii) **Workmen's portion of the security =**

Value of security \times Workmen's dues / Workmen's dues + Secured loan

$$= 1,00,000 \times 1,00,000 / 1,00,000 + 3,00,000$$

$$= 1,00,000 \times 1/4 = 25,000.$$

Therefore, workmen's portion of the value of security is Rs. 25,000

If the Liquidators incurs Rs.10,000 for the preservation, then:

Whole of expenses \times Workmen's portion / Value of the Security

$$= 1,00,000 \times 1,00,000 \times 25,000 / 1,00,000$$

$$= 10,000 - 2,500$$

$$= 7,500.$$

This is the amount to be borne by the secured creditors.

(6 marks)

ANS-2

A. Capital Account Transaction [Section 2(e)]:

Means a transaction which alters:

- Assets or Liabilities including contingent liabilities outside India of PRI or
- Assets or Liabilities in India of PROI (Person resident outside India) would be a capital account transaction.

As per Schedule II of Capital Account Transaction Regulations,

Investment in Immovable Properties in India by PROI is permitted subject to regulations. Hence Mr. Janak can proceed with the transaction as per the regulations.

Commission by Persons other than Individual:

"The type of payment as is covered under Third Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000 and for withdrawing foreign Exchange exceeding USD 25,000 or 5% of the inward remittance whichever is more as commission to agent abroad for sale of commercial plot / residential flats in India, prior approval of RBI would be required.

B.CALCULATION OF MAXIMUM AMOUNT OF COMMISSION

The maximum amount of commission payable to each broker shall be:

No. of properties X Amount of each property X % of inward remittance X Commission
%/number of brokers

$$= (5 \times 1,50,00,000 \times 50\% \times 5\%) / 2$$

$$= (5 \times 75,00,000 \times 5 / 100) / 2$$

$$= 18,75,000 / 2$$

= Rs. 9,37,500 to each broker.

(6 Marks)

ANS-3

(1) “Contracting State” means any Country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such Country through a treaty or otherwise.

(2) Assistance to a contracting State in certain cases [Section 58]

Where a letter of request is received by the Central Government from a Court of Authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or Authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any Authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or, as the case may be, any other law for the time being in force.

(4 Marks)

ANS-4

According to Section 38 of the Prevention of Money Laundering Act, 2002, if the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by third Member of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it. In the given question, the decision regarding attachment of Rajan’s property

was taken by a majority decision (total 3 members: two original members + the third member to whom the matter was referred). The contention of Rajan that since the original bench was divided in its opinion, the matter ought to be decided by the Chairman is invalid.

(4 Marks)

ANS-5

Period within which amount representing the export value shall be realized & repatriated as per Section 7 of the FEMA, 1999 read with Foreign Exchange Management (Export of Goods and Services) Regulations, 2015:

The amount representing the full export value of goods / software/ services exported shall be realized and repatriated to India **within nine months from the date of export or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time**, provided:

(a) that where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorized dealer as soon as it is realized and in any case within fifteen months from the date of shipment of goods or **within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time;**

(b) Extension of Period: Further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorized dealer may, for a sufficient and reasonable cause shown, extend the said period, as the case may be.

Sunita Garments Limited may be advised as above.

(5 Marks)

ANS-6

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.

It is further provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

However, the above provision shall not 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 the winding up of a company under this Act, the workmen's dues shall be paid in priority to all other debts ranking pari passu with secured creditors.

As per the facts of the question, 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 the Tribunal and subject to such terms as the Tribunal may impose. Further, the dues/ interest of the workmen will be protected in priority as workmen's dues shall be paid in priority to all other debts ranking pari passu with secured creditors.

(5 marks)

ANS-7

1. (d) Statements (1) & (2) are correct

2. (a) Lisa

3. (c) Mr. X, Mr. Z, Mr. A and Mr. M

(2×3 = 6 Marks)

4. (d) Condition (1) as well as Condition (2) is satisfied

5. (d) The permission from the Ministry of Finance, Department of Economic affairs will not be required as State government are exempted for the remittance in foreign print media if the purpose involved is promotion of foreign investments.

6. (b) Within three weeks from the date of passing of winding up order

7. (b) Yes, money laundering transactions done via credit card and online payments comes under the Prevention of Money Act

(1×4 = 4 Marks)



