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Answer Paper	
Corporate & Economic Laws	Duration: 75
Details: Test – 1	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

Section 164(1) of the Companies Act, 2013 provides that a person shall not be appointed as a director if he has not paid any calls in respect of any shares of the Company held by him and 6 months have elapsed from the last day fixed for the payment of the call.

Further, Section 164(2) states that no person who is or has been a director of a Company which has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that Company or appointed in other Company for a period of five years from the date on which the said company fails to do so.

In the light of the provisions stated above and facts of the question,

(1) Mr. Yashpal cannot be appointed as director in Light Tubes Limited, since he has not paid the amount of second call amount on 20,000 fully paid shares and 6 months have elapsed from the last day fixed for the payment of the call (the call amount is due since 20th June, 2020 and he is to be appointed director in 2021).

(2) Mr. Dugal is a director in Heavy Tubes Limited which has defaulted in the repayment of deposits accepted by it and payment of interest thereon, since October 2019 (i.e. the default has continued for more than one year- 31st October 2019 to 2nd May 2021). Hence, he will not be eligible to be appointed as director in Light Tubes Limited.

(5 marks)

ANS-2

i. As per section 196(3) of the Companies Act, 2013, no company shall appoint or continue the employment of any person as Managing Director, Whole-Time Director or Manager who is below the age of 21 years or has attained the age of 70 years.

However, where a person has attained the age of seventy years, he may still be appointed to such office if a special resolution is passed in this respect. In such a case, the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.

Further, where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

In the given question, the appointment of Mr. X is not valid as special resolution was not passed. However, it could have been regularized (since the votes cast in favour exceeded votes cast against the motion of appointment of Mr. X as Whole Time Director) by seeking approval of the Central Government, which, if satisfied, can accord such approval.

ii. As per Explanation 1 to Section II of Part II of Schedule V “Effective Capital” means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

The effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.

Particulars Amount	(Rs. in crores)
Paid up Capital (excluding share application money)	860
Add: Reserves and surplus excluding revaluation reserve	600
Add: Long term borrowings	800
Less: Investments	160
Less: Accumulated Losses	40
Effective Capital	2,060

iii. Section II of Part II of Schedule V states that where the effective capital is Rs. 250 crore and above, the remuneration payable shall not exceed Rs. 120 lakh plus 0.01% of the effective capital in excess of Rs. 250 crore (i.e., 1.20 cr. + 0.181 cr. = 1.381 crore).

Accordingly, the total managerial remuneration payable by Dash Limited to each Managerial person other than a managerial personnel functioning in a professional capacity shall be Rs. 1.381 crore.

Provided that the remuneration in excess of the above limits may be paid if the resolution passed by the shareholders, is a special resolution. Further, it has been clarified by an explanation that if the managerial personnel are employed for a period less than one year, the remuneration payable to him shall be prorated.

iv. In terms of section 197(4) of the Companies Act, 2013, the remuneration payable to the directors of a company including any Managing or Whole Time Director or Manager, shall be determined in accordance of this section, either:

- a. By the articles of the company
- b. By a resolution or
- c. If the articles so require by special resolution, passed by the company in general meeting.

(5 marks)

ANS-3

(i) Borrowing from Financial Institutions: As per Section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a Company, without obtaining the approval of shareholders in a general meeting, can borrow money including moneys already borrowed up to an amount which does not exceed the aggregate of paid up capital of the company, free reserves and securities premium. Such borrowing shall not include temporary loans obtained from the Company's bankers in the ordinary course of business. Here, free reserves do not include the reserves set apart for specific purpose.

According to the above provisions, the Board of Directors of RML Ltd. can borrow, without obtaining approval of the shareholders in a general meeting, up to an amount calculated as follows:

Particulars	Rs. in Crore
Paid up Capital	10
Reserves & Surplus (excluding Revaluation Reserve)	10
Credit Balance in Profit & Loss Account (to be treated as Free 2 Reserve)	2
Aggregate of Paid-up Capital and Free Reserves	22
Total borrowing power of the Board of Directors of the Company, 22 i.e.	22

100% of the aggregate of Paid-up Capital, Free Reserves and Securities Premium	
Less: Amount already borrowed as secured loans	8
Amount up to which the Board of Directors can further borrow without the approval of shareholders in a general meeting.	14

(ii) According to Section 182(1) of the Companies Act, 2013, a Company except a Government Company and a Company which has been in existence for less than three financial years, can make political contributions, directly or indirectly, to any political party. Further, the contribution shall be made by a Company only after passing a resolution at a meeting of the Board of Directors authorizing such contribution.

In view of the above provisions, RML Limited can contribute the said amount of Rs. 10,00,000 to the concerned political parties. However, it needs to pass a Board resolution authorizing making of such contribution at a meeting of the Board of Directors.

(5 marks)

ANS-4

Section 209 of the Companies Act, 2013 states that, if the Registrar has reasonable ground to believe that the books and papers of: -

- A company or
- Relating to the key managerial personnel or
- Any director or
- Auditor or

- Company secretary in practice if the company has not appointed a company secretary are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court for the seizure of such books and papers:
 - a. enter with such assistance as may be required and search the place where such books or papers are kept, and
 - b. Seize such books and papers as he considers necessary after allowing the company to take copies of the order from the Special court.

In the given scenario, the registrar has failed to obtain possession from special court. So, he is not authorised to enter the premises of the company and seize the books of accounts of MBIND Bronze Limited. Hence, the contention of MBIND Bronze Limited is valid in law.

(5 marks)

ANS-5

Provisions related with DIN:

Provisions related with Director's Identification Number are covered under Sections 153 to 159 of Companies Act, 2013 read with Rules 9 to 12B of Companies (Appointment and Qualification of Directors) Rules, 2014.

(i) Surrender of DIN: As per provisions of Companies Act, 2013 read with relevant rules, in respect of an individual who is in possession of Multiple DINs, he can retain the Oldest DIN only. DINs obtained later have to be surrendered.

(ii) Procedure to be followed for surrender of DIN:

1. The holder of multiple/duplicate DIN shall make an application for its Surrender to the Concerned Regional Director (RD).
2. The application shall be filed in Form DIR-5.

Action to be taken by C.G./Regional Director: Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, cancel or deactivate the DIN in case the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number.

(iii) Keeping all directorship under one DIN: As stated above, in case of two DINs, individual has to surrender the Second DIN. IN such a situation, following shall be done to keep all the directorship: Individual has to surrender Second DIN Only. RD shall migrate directorship of Second DIN on First DIN. After migration second DIN shall be surrendered.

(5 marks)

ANS-6

As per the facts given in the question, Mr. Mania is MD of S Ltd. which is a subsidiary of H Ltd. Mr. Mania was proposed to act as the MD of H Ltd. He agreed subject to a condition that he will continue to act as the MD of S Limited. Directors of H Ltd. proposed to appoint him by means of a resolution (containing the terms and conditions of appointment excluding remuneration) by circulation.

According to Section 196(4) read with Section 203(3) of the Companies Act, 2013, a whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. Also a person can act as MD in 2 companies. So, the decision of appointing Mr. Mania by H Ltd., holding the office in its subsidiary company S Ltd., is valid. But the proposed mode i.e, passing resolution by circulation of his appointment as the MD of H Ltd. is not valid, because as per the section it can be made by means of a resolution of the Board at its meeting containing the terms and conditions of the appointment including the remuneration.

In case where S Ltd. is not a subsidiary of H Ltd:

As per third proviso to Section 203 of the Companies Act, 2013, a Company may appoint or employ a person as its Managing Director, if he is the Managing Director or Manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

Hence, in the second situation, the answer will remain same as to appointment of Mr. Mania.

(5 marks)

ANS-7 MCQs:-

1. (c) Mr. Jigar will not be eligible to be appointed as a director of JKL Ltd. on the scheduled AGM but may be after expiry of five years from the date of default.
2. (a) The CG
3. a) The committee needs to reconstitute as the majority members are not experienced in the field of Finance.

(2 × 3 = 6 marks)

4. (c) Enquiry can be conducted by seeking an information from the past directors (officers who were earlier in employment of the company) and they are bound to furnish information and explanation to the best of their knowledge.
5. (c) Or; or; or; and; 1 year; 5 years
6. (b) Excess amount shall be recovered irrespective of whether at present he is MD or not

7. (b) Only Statement (2) is correct

(1 × 4 = 4 marks)

