



PAPER – 2: CORPORATE AND OTHER LAWS



QUESTIONS

DIVISION A: MULTIPLE CHOICE QUESTIONS

Case Scenario 1

Tejas Infra Limited was incorporated by Tejasvi Singh and his wife Meenakshi along with seven other family members in the year 2001 with an aim to undertake infrastructure projects relating to transportation in the country. The company had successfully completed construction of roads and canals in Delhi, UP and Chandigarh and rose to become one of the prominent construction companies in India.

The Registered Office of the company is situated in Connaught Place, New Delhi with a capital base of ₹ 100 crore divided into ten crore equity shares of ₹10 each. The company has eight directors of which three are independent directors. In the year 2019, the company got new projects from the State Government of Punjab to build four flyovers and underpasses in different cities of Punjab.

In order to increase its capital base, Tejas Infra Limited decided to issue 1,00,000 preference shares of ₹ 100 each to the existing shareholders. For this, purpose it was decided to increase the Authorised Capital by ₹ 500,00,000 divided into 5,00,000 shares of ₹ 100 each.

The projects went off well and the turnover rose to the tune of ₹ 3600 crore in the immediately preceding financial year 2022-23. The net worth of the company stood at ₹ 550 crore.

As they crossed the threshold limit in the immediately preceding financial year 2022-23, a Board level Committee headed by one of the independent

directors, namely, Paritosh was constituted to allocate budget, review the progress and provide guidance on various Corporate Social Responsibility (CSR) and sustainability initiatives. It was decided to spend the requisite amount towards skill development, vocational training, provision of safe drinking water facility, etc. Lokesh, one of the directors, is also a member of this Corporate Social Responsibility Committee. He is in favour of Janta Andolan Manch, a political party. This party is quite prominent in undertaking social work. As per his advice, the Board by a unanimous resolution resolved to contribute ₹ 5,00,000 to the said political party i.e. Janta Andolan Manch and to treat such contribution as part of CSR activity.

Multiple Choice Questions

1. From the case scenario, it is evident that Tejas Infra Limited decided to issue 1,00,000 preference shares of ₹ 100 each to the existing shareholders. From the options given below choose the one which indicates the maximum period which is permitted to the company for redemption of preference shares.
 - (a) Tejas Infra Limited being involved in infrastructural activities is permitted to specify maximum period of thirty-five years for redemption of preference shares subject to the condition that it shall redeem minimum 20% of preference shares per year commencing from 31st year onwards or earlier, on proportionate basis at the option of preference shareholders.
 - (b) Tejas Infra Limited being involved in infrastructural activities is permitted to specify maximum period of thirty-five years for redemption of preference shares subject to the condition that it shall redeem minimum 10% of preference shares per year commencing from 26th year onwards or earlier, on proportionate basis at the option of preference shareholders.
 - (c) Tejas Infra Limited being involved in infrastructural activities is permitted to specify maximum period of thirty years for redemption of preference shares subject to the condition that it shall redeem minimum 10% of preference shares per year commencing from 21st year onwards or earlier, on proportionate basis, at the option of preference shareholders.

- (d) Tejas Infra Limited being involved in infrastructural activities is permitted to specify maximum period of thirty years for redemption of preference shares subject to the condition that it shall redeem minimum 20% of preference shares per year commencing from 26th year onwards or earlier, on proportionate basis, at the option of preference shareholders.
2. The case scenario states that the turnover of Tejas Infra Limited rose to the tune of ₹ 3600 crore and net worth of the company stood at ₹ 550 crore in the immediately preceding financial year 2022-23 which required formation of CSR Committee. What is the third criterion which if crossed shall also require that a CSR Committee be formed. Choose the correct option from those stated below:
- (a) The third criterion which also requires formation of CSR Committee is that the company has net profit of ₹ two crore or more in the immediately preceding financial year.
- (b) The third criterion which also requires formation of CSR Committee is that the company has net profit of ₹ three crore or more in the immediately preceding financial year.
- (c) The third criterion which also requires formation of CSR Committee is that the company has net profit of ₹ five crore or more in the immediately preceding financial year.
- (d) The third criterion which also requires formation of CSR Committee is that the company has net profit of ₹ six crore or more in the immediately preceding financial year.
3. According to the legal provisions, it is mandatory to redeem preference shares at the stipulated time. Keeping in view the above case scenario, which source is required to be used by Tejas Infra Limited for the redemption of outstanding preference shares:
- (a) Tejas Infra Limited is required to redeem preference shares out of the profits which would otherwise be available for dividend.
- (b) Tejas Infra Limited is required to redeem preference shares out of the proceeds of a fresh issue of shares made for the purposes of such redemption.

- (c) Both (a) and (b).
 - (d) Tejas Infra Limited is required to redeem preference shares out of its Capital Redemption Reserve.
4. While constituting a CSR Committee, how many minimum directors are required to be appointed by Tejas Infra Limited:
- (a) CSR Committee formed by Tejas Infra Limited shall have minimum two directors.
 - (b) CSR Committee formed by Tejas Infra Limited shall have minimum three directors of which at least one director shall be an independent director.
 - (c) CSR Committee formed by Tejas Infra Limited shall have minimum four directors of which at least one director shall be an independent director.
 - (d) CSR Committee formed by Tejas Infra Limited shall have minimum four directors of which at least two directors shall be independent director.

Case scenario 2

Greenfield LLP and Bluewave LLP were two thriving businesses operating in the renewable energy sector. Greenfield LLP specialized in solar panel manufacturing, while Bluewave LLP was known for its innovations in wind turbine technology. Both companies saw a strategic opportunity to join forces and create a more comprehensive renewable energy solution provider. They decided to merge into a single entity, to be named EcoFuture LLP.

To facilitate this merger, the management of both companies proposed a scheme of compromise and arrangement under Section 60 of the LLP Act. They approached the Tribunal to sanction this scheme, which involved transferring all assets, liabilities, and ongoing legal proceedings of both Greenfield LLP and Bluewave LLP to EcoFuture LLP.

The Tribunal reviewed the proposal and found that the merger scheme was designed for the reconstruction and amalgamation of Greenfield LLP and Bluewave LLP. The Tribunal issued an order under Section 62, sanctioning the scheme and setting forth several provisions to ensure a smooth transition:

1. All assets and liabilities of Greenfield LLP and Bluewave LLP were to be transferred to EcoFuture LLP.
2. Any ongoing legal proceedings involving either of the original LLPs would continue under the name of EcoFuture LLP.
3. Both Greenfield LLP and Bluewave LLP would be dissolved without the need for winding up.

However, a few partners from Greenfield LLP were not in favor of the merger. They dissented from the compromise and arrangement. The Tribunal provided specific directions to ensure that their interests were adequately addressed.

After the order was made, both LLPs had to file a certified copy of the Tribunal's order with the Registrar within 30 days for registration. Unfortunately, due to some administrative delays, this filing was not completed within the stipulated time, leading to penalties for both EcoFuture LLP and its designated partners.

Answer the following MCQs in the light of the Limited Liability Partnership Act, 2008

5. What was the main purpose of the scheme proposed between Greenfield LLP and Bluewave LLP?
 - (a) To dissolve both LLPs.
 - (b) To transfer all assets to a third party.
 - (c) For the reconstruction and amalgamation of the LLPs.
 - (d) To liquidate the companies.
6. What authority does the Tribunal have when it sanctions a compromise or arrangement under Section 60?
 - (a) It can only supervise the arrangement.
 - (b) It has no authority after sanctioning the arrangement.
 - (c) It can supervise, modify, and give directions for the arrangement.
 - (d) It can dissolve the LLPs directly without any conditions.

7. What penalty applies if an LLP fails to comply with the 30-day filing requirement?
- (a) Immediate dissolution of the LLP.
 - (b) A fine of ₹10,000 and additional penalties for continuing contravention.
 - (c) Suspension of all business activities.
 - (d) Revocation of the Tribunal's order.

Independent MCQs

8. Mr. X had resided in India for less than 182 days during the financial year 2022-2023. He arrived in India on April 1, 2023, to conduct business and intends to leave the business on April 30, 2024, with plans to depart from India on June 30, 2024. What is Mr. X's residential status for the financial year 2023-2024 under the FEMA, 1999? How many days did Mr. X stay in India during the financial year 2023-2024?
- (a) Non-Resident, 182 days
 - (b) Resident, 365 days
 - (c) Resident but Not Ordinarily Resident (RNOR), 240 days
 - (d) Resident, 91 days
9. Apex Manufacturing is an industrial company based in India. Recently, the company found itself embroiled in legal issues concerning two separate offences under different enactments. The first offence involved a violation of environmental regulations, for which the company was prosecuted and fined. Subsequently, Apex Manufacturing was charged under a different law for a similar but not identical environmental violation.

The first offence was under the Environment Protection Act, 1986, for failing to dispose of hazardous waste properly. The second offence, under the Water (Prevention and Control of Pollution) Act, 1974, involved discharging untreated wastewater into a river.

Mr. Sharma, the company's legal advisor, consulted on said issue. He determined the prosecution outlined in Section 26 of the General

Clauses Act, 1897, and Article 20(2) of the Constitution of India, which protects against double jeopardy. Comment upon the validity of protection that can be given to the Apex Manufacturing.

- (a) Yes valid, because both involve environmental violations.
- (b) Not valid, because the specific actions and legal provisions violated are different.
- (c) Its valid, because both result in environmental harm.
- (d) Its valid, though were prosecuted under different Acts but nature of act is similar.

10. Regal Textiles, a well-established fabric manufacturing company, has been operating under the Textile Regulations Act of 1980 for several decades. Over the years, various provisions of this Act have been subject to interpretation by both the company and the industry at large. One such provision pertains to the definition of "sustainable practices," which has been a point of contention. "Sustainable practices" to include the use of organic materials and recycling waste products. This interpretation has been widely accepted and acted upon without any legal challenges.

Recently, a new regulatory body has argued that "sustainable practices" should be strictly defined to include only carbon-neutral processes, excluding the use of non-organic recycled materials. This new interpretation has created confusion and potential compliance issues for Regal Textiles, which has long adhered to the established understanding of the term. He prepares to argue that the long-standing interpretation of "sustainable practices" should be upheld. What principle will Mr. Kumar likely rely on to argue against the new interpretation proposed by the regulatory body?

- (a) The principle of judicial activism.
- (b) The principle of strict construction.
- (c) The principle of historical usage.
- (d) The principle of prospective overruling.

Descriptive questions

11. Prashant incorporated a "One Person Company" making his sister Priya as the nominee. Priya is an Indian citizen. She was born and brought up in Kanpur. However, now Priya and her husband are leaving India permanently to stay with their son who is settled abroad for the last 15 years. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.
 - (i) If Priya is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?
 - (ii) In case Priya withdraws her nomination as a nominee to the OPC, whether Prashant can appoint his minor son Rushang as the nominee of the OPC?
12.
 - (i) In the light of the provisions of the Companies Act, 2013, discuss the status of Gram Pte, which is a company registered in Singapore, that is conducting online business through telemarketing in India without a physical place of business. It is also informed that for the telemarketing business in India, its main server located outside India.
 - (ii) In continuance of (i) above, Prism Ltd. (registered in India), a wholly owned subsidiary company of Gram Pte decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard.
13. XYZ Ltd., a prominent manufacturing company, is in the process of appointing a new auditor for the upcoming financial years. Mr. A is a renowned auditor being considered for the role. During the due diligence process, the following details come to light:
 1. Mr. B and Mr. A are partners in ABC & Co. Mr. B has taken a personal loan of ₹4 Lacs from XYZ Ltd.'s subsidiary, EFG Ltd., six months ago.
 2. Mr. A's relative, Ms. C, has an outstanding debt of ₹2 Lacs with DEF Ltd., an associate company of XYZ Ltd., which was taken three months ago.

Discuss about the eligibility of Mr. A for being appointed as an auditor of XYZ Ltd. in view of the provisions of the Companies Act, 2013.

14. Om Ltd. served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:
- (i) Resolution to increase the authorised share capital of the company.
 - (ii) Appointment and fixation of the remuneration of Mr. Pramod as the statutory auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013.

15. (i) K Ltd. in its first year of incorporation maintained its books of account under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013?
- (ii) State the person responsible for complying with the provisions regarding maintenance of Books of Accounts, etc. of a Company.
16. ABC Pvt. Ltd., a company that has been operational for two years, was incorporated with the submission of false information and suppression of material facts. The company's founders, Mr. X and Ms. Y, provided incorrect financial statements and concealed significant liabilities during the incorporation process. This misrepresentation was recently uncovered during an internal audit initiated by the company's new CFO, Mr. Z.

Upon discovering these fraudulent actions, Mr. Z has filed an application with the National Company Law Tribunal (NCLT). Explain the provisions of the Companies Act, 2013 in respect where a company has been incorporated by furnishing false or incorrect information.

The Limited Liability Partnership Act, 2008

17. XYZ LLP was registered under the Limited Liability Partnership Act, 2008 (LLP Act) with a name that was later found to be identical to an existing company's name, XYZ OPC Pvt Ltd. This similarity was not noticed at the time of registration.

Explain the provisions of the Limited Liability Partnership Act, 2008, in respect of the following:

- (i) When the name of LLP is identical.
- (ii) Formalities with the Registrar of Companies after name change of LLP.

The General Clauses Act, 1897

18. Mr. Chaggan Lal is an importer dealing in luxury perfumes. Recently, a new enactment was passed which imposes a duty of 15% on the value of luxury goods, including perfumes.

Now Mr. Chaggan Lal has approached you to explain to him the provisions in relation to 'Duty to be taken pro rata in enactments' of the General Clauses Act, 1897. Also, help him to calculate the amount of duty on a Shipment of 100 bottles of perfumes, each valued at \$50.

Interpretation of Statutes

19. Imagine you are a legal advisor for a company drafting a new contract. One of the clauses in the contract states: "Notwithstanding anything contained in any other provisions of this agreement, the company reserves the right to terminate the agreement without notice if there is a breach of confidentiality by the employee." Explain to the management of the company the meaning of a non-obstante clause in legal documents and its effect on overriding other provisions with reference to decided case law.

The Foreign Exchange Management Act, 1999

20. Mr. Arjun, an Indian resident, had been working abroad for the past 10 years. During his tenure abroad, he acquired foreign currency and held investments in foreign securities. He also inherited a property located in New York from his late grandfather, who was a non-resident Indian. After returning to India permanently, Mr. Arjun wishes to understand the provisions under the Foreign Exchange Management Act, 1999 (FEMA) regarding the ownership and utilization of his foreign assets.



SUGGESTED ANSWERS/HINTS

MCQ No.	Most Appropriate Answer
1.	(c)
2.	(c)
3.	(c)
4.	(b)
5.	(c)
6.	(c)
7.	(b)
8.	(b)
9.	(b)
10.	(c)

Descriptive questions

11. (i) According to Rule 3 of *the Companies (Incorporation) Rules, 2014*, only a natural person who is an Indian citizen whether resident in India or otherwise shall be eligible to incorporate a One Person Company.

In the given question Priya is an Indian citizen and a resident of India.

Thus, if Priya is able to maintain her Indian citizenship status in India after moving abroad then she can remain as nominee in OPC of Prashant irrespective of her residential status.

- (ii) The memorandum of One Person Company shall also indicate the name of the natural person, other than minor; who is an Indian citizen, whether resident in India or otherwise (as nominee), along with his prior written consent, who shall, in the event of the

subscriber's death or his incapacity to contract become the member of the company.

In the light of the above provision, it is clear that a minor cannot be appointed as a nominee/ member of OPC. Hence, Prashant cannot appoint his son Rushang as a nominee to his OPC.

12. (i) According to section 2(42) of the Companies Act, 2013, "foreign company" means any company or body corporate incorporated outside India which –

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

According to Rule 2(1)(c)(iv) of the *Companies (Registration of Foreign Companies) Rules, 2014*, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to, online services such as telemarketing, telecommuting, telemedicine, education and information research.

In view of the above provisions of the Companies Act, 2013 and the facts of the question, it can be said that being involved in *online business of telemarketing* services in India having its main server outside India, Gram Pte will be treated as foreign company.

- (ii) Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Here, Prism Ltd. is advised to follow the above procedure accordingly.

13. According to section 141(3)(d)(ii) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he or his relative or

partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lacs.

In this scenario:

1. Mr. A's partner, Mr. B, has a debt of ₹ 4 Lacs from EFG Ltd., a subsidiary of XYZ Ltd.
2. Mr. A's relative, Ms. C, has a debt of ₹ 2 Lacs from DEF Ltd., an associate company of XYZ Ltd.

The total indebtedness linked to Mr. A's partner and relative is ₹ 6 Lacs (₹ 4 Lacs + ₹ 2 Lacs), which exceeds the ₹ 5 Lacs threshold mentioned in the provision.

Therefore, Mr. A is disqualified from being appointed as the auditor of XYZ Ltd. under section 141(3)(d)(ii) of the Companies Act, 2013, as the combined indebtedness of his partner and relative surpasses the permissible limit.

- 14.** Under section 102(2)(b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further, under section 102(1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:-

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
 - (i) every director and the manager, if any;
 - (ii) every other key managerial personnel; and
 - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

The information about the amount is also a material fact that may enable members to understand the meaning and implication of items of business to be transacted and to take decision thereon.

Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

Part (i) of the question relating to increase in the Authorized Capital falls under special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

Part (ii) is an ordinary business and hence explanatory statement is not required. However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking.

The information about the amount is a material fact with reference to the proposed increase of authorized share capital and remuneration of Mr. Pramod as the auditor.

The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

- 15. (i)** According to section 128(1) of the Companies Act, 2013, every company shall prepare books of account and other relevant books and papers and financial statement for every financial year, which give a true and fair view of the state of the affairs of the company, including that of its branch office(s) if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.

Hence, maintenance of books of account under Singly Entry System of Accounting by K Ltd. is not permitted.

- (ii)** Persons responsible to maintain books

As per section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by

the company with the requirement of maintenance of books of accounts etc. shall be:

- (a) Managing Director,
- (b) Whole-Time Director, in charge of finance
- (c) Chief Financial Officer
- (d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

16. Order of the Tribunal: According to section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants—

- (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- (b) direct that liability of the members shall be unlimited; or
- (c) direct removal of the name of the company from the register of companies; or
- (d) pass an order for the winding up of the company; or
- (e) pass such other orders as it may deem fit.

However, before making any order under this sub-section, -

- (i) the company shall be given a reasonable opportunity of being heard in the matter; and
- (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

17. According to section 17 of the LLP Act, 2008,
- (i) Notwithstanding anything contained in sections 15 and 16, if through inadvertence, or otherwise, the LLP, on its first registration or on its registration by new name, is registered by a name which is identical with or too nearly resembles to-
 - (a) that of any other LLP or a company; or
 - (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999as likely to be mistaken, then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct such LLP to change its name or new name within a period of 3 months from the date of issue of such direction,
Provided that an application of the proprietor of the registered trade marks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act.
 - (ii) Where an LLP changes its name or obtains new name, it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.
18. According to section 12 of the General Clauses Act, 1897, where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.
The amount of duty would be= $(100 \times 50) \times 15\% = \750 .
19. A clause that begins with the words "notwithstanding anything contained" is called a *non-obstante* clause. Unlike the "subject to" clause,

the notwithstanding clause has the effect of making the provision prevail over others. When this term is used then the clause will prevail over the other provision(s) mentioned therein. (*K. Parasurammaiah v. Pakari Lakshman AIR 1965 AP 220*)

In conclusion, a non-obstante clause plays a crucial role in legal drafting by ensuring that the specified provision prevails over conflicting provisions, thereby enhancing legal certainty and consistency in judicial interpretation.

20. Under the provisions of the Foreign Exchange Management Act, 1999 (FEMA), Mr. Arjun, being a resident in India, can hold, own, transfer, or invest in foreign currency, foreign securities, or immovable property situated outside India under certain conditions. These conditions are clarified by the RBI through A.P. (DIR Series) Circular No. 90 dated 9th January, 2014, which elaborates on section 6(4) of the Act.

Clarifications under section 6(4) of FEMA

1. Foreign Currency Accounts

- Mr. Arjun can maintain foreign currency accounts that were opened and maintained by him when he was resident outside India.

2. Income and Investments

- Income earned through employment, business, or vocation outside India while Mr. Arjun was a non-resident.
- Investments made abroad during his non-resident status.
- Gifts or inheritance received from a non-resident Indian.

3. Foreign Exchange and Income therefrom

- Foreign exchange holdings, including income arising from them, held outside India by Mr. Arjun, acquired through inheritance from a non-resident Indian.

4. Utilization of Assets After Return to India

- Mr. Arjun may freely utilize all eligible assets abroad, including the income on such assets or sale proceeds received after his return to India.
- He can make payments or fresh investments abroad without the approval of the Reserve Bank of India, provided the funds used are from eligible assets held by him abroad and the transaction complies with FEMA provisions.

Therefore, Mr. Arjun is eligible to hold and utilize his foreign assets as per the provisions outlined in section 6(4) of FEMA and the RBI circular. These provisions allow him to manage his foreign currency, securities, and inherited property located outside India in compliance with the regulations governing residents' dealings in foreign assets under FEMA.