

EXAMINATION OF ARTICLED CLERKS

PAPER II

CORPORATE LAWS

WEDNESDAY 30th APRIL, 2014

TIME : 3 HOURS [1:00 P.M. TO 4:00 P.M.]

(TOTAL MARKS – 100)

Note:- (1) Short and precise answers will be appreciated. Please do not exceed the specified number of bullet points.

(2) Case situations should be analysed by providing your reasoning. If you know any case law which covers the situation, please do cite such case law.

(3) Notified sections of Companies Act, 2013 (upto September, 2013 only) apply.

1. Attempt **any two** of the following:-

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- (a) Advanced Technologies Limited ('ATL'), a listed company, has a wholly owned subsidiary – National Commodity Exchange Limited ('NCEL'), whose majority directors are nominees of ATL. The Managing Director of NCEL commits a fraud on the investors of NCEL, who suffer huge losses. NCEL is commercially insolvent. The investors wish to sue ATL to recover their monies. Advise the investors.
- (b) Surf Club Limited ('SCL') permits user of its grounds for a rental of Rs.10 lakhs. Mr. Desai, non-executive Chairman of SCL, is permitted by the Board, to use the grounds, for his daughter's wedding, free of rental. Mr. Kishore, a member, contends that this is unauthorised remuneration in the hands of Mr. Desai and/or unauthorised loan to Mr. Desai, whom, he alleges, has contravened the provisions of the Companies Act. Please advise Mr. Desai.
- (c) Soonawala Group holds 14.5% equity share capital of Orchard Chemicals Limited ('OCL'), which has taken a loan from the Soonawala Group of Rs.25 crores. OCL defaults in repayment of the loan. Soonawala files a petition before the Company Law Board alleging mismanagement of OCL, on the ground that OCL is not paying its creditors on due dates. Advise OCL.

2. Write **five** bullet points on any *three* of the following:-

15

- (a) Statement annexed to notice calling a general meeting.

- (b) Circulation of members' resolution.
 - (c) Failure to distribute dividend
 - (d) Proportionate Representation for appointment of directors.
 - (e) Restriction on powers of the Board of Directors.
3. List **ten** bullet steps/principles on **either** of the following:- 10
- (a) Petition to prevent oppression and/or mismanagement; **or**
 - (b) Petition to reduce share capital.
4. Attempt **any three** of the following:- 15
- (a) A winding up petition is presented against Bust Limited on 15th March, 2014. Sometime in August 2013, Bust Limited had transferred a vacant plot of land, near Byculla Zoo, valued at nearly Rs.1000 crores to a private limited company, Little Credit Investments Private Limited at Rs.250 crores. A brother of one of the directors of Bust Limited holds 20% equity in Little Credit. Subsequently, Bust Limited is ordered to be wound up. Advise the liquidator of Bust Limited.
 - (b) Ramesh Shah holds 55% equity shares of Etco Denim Private Limited and balance 45% equity shares are held by Pramod Mehta. There is a shareholders' agreement, but the same is not reproduced in the Articles of Association of Etco. Mehta defaults on his obligations to market the goods, under a separate agreement between Etco and Mehta. Shah calls an EGM to remove Mehta as a director. Advise Mehta.
 - (c) Mr. Pachure, Senior Partner of Pachure & Co., Chartered Accountants, statutory auditors of Tejasvi Dhara Limited, a listed company, signs its annual accounts, which are subsequently adopted by the shareholders of Tejasvi at their AGM. Two months later, it is discovered that Mr. Pachure is a beneficiary of a private trust which holds less than two percent of Tejasvi's equity share capital. Advise Mr. Dhamaal, an activist minority shareholder of Tejasvi, who wishes to challenge the validity of the annual accounts and also initiate action against Mr. Pachure.
 - (d) At the annual general meeting of Excellent Governance Ltd., a listed company, neither the non-executive Chairman, Managing Director, or the Audit Committee Chairman are present. Only three non-whole-time directors are present. Dr. Ruia, a shareholder, appoints Dr. Poonawalla as his proxy. Dr. Poonawalla wishes to speak at the

meeting but is not permitted to do so. Dr. Ruia challenges the validity of the resolutions passed at the Annual General Meeting. Advise the Company.

5. Please write a para on **any three**:- 15
- (a) Prohibition on Insider Trading under the Companies Act, 2013
 - (b) Proxy and Poll
 - (c) Doctrine of Indoor Management
 - (d) Compensation for loss of office
 - (e) Loans to Directors
6. Please write TRUE or FALSE against any **five** of the following:- 5
- (a) An order for winding up a company shall operate in favour of all its creditors.
 - (b) If a subsidiary company has been a shareholder in its holding company even before it became such subsidiary, then it may continue to hold such shares.
 - (c) Every company making a public offer shall issue the securities only in a dematerialised form.
 - (d) The debentures of a company are movable property.
 - (e) A member must use all his votes in the same way.
 - (f) Central Government can prescribe accounting standards.
 - (g) In all cases of contribution to charitable funds, prior permission of the company in general meeting is required.

(OPEN BOOK PORTION)

7. Please analyse **five** bullet points in **any four** of the following:- 12
- (a) Derivative Contracts
 - (b) Securities Appellate Tribunal (SAT)
 - (c) Voluntary Offer
 - (d) Disclosures for buy-back by unlisted company

(e) Delisting of Securities

8. Please write a para on **any three**:-

9

(a) Escrow under the Takeover Code

(b) Fit and proper person

(c) Buy back through Stock Exchange

(d) Continual Disclosures

(e) Acquirer and acquisitions

9. Please write TRUE or FALSE against any **nine** of the following:-

9

(i) An unlisted public company can buy back its shares by purchasing shares issued to its employees pursuant to a Sweat Equity Scheme.

(ii) SEBI Takeover Regulations relating to open offer do not apply to a Rights Issue.

(iii) SEBI has powers to intercept telephone conversations under the SEBI Act, 1992.

(iv) Demutualisation is separation of ownership and management from the trading rights of Stock Exchange members.

(v) A public offer (under the Takeover Code) can be withdrawn, at anytime, if the sole acquirer dies.

(vi) Acquisition of shares by a scheduled commercial bank while invoking a pledge is exempt from making an open offer.

(vii) A scheduled commercial bank is a qualified institutional buyer.

(viii) State government grants recognition to a stock exchange.

(ix) Under the Takeover Code, the offer price to a willing seller can be paid only in cash.

(x) A public company, not listed on any stock exchange, is required to reserve for small shareholders, fifteen percent of the number of securities it proposes to buy back.