

Total Marks - 60

Time allowed – 1.5 hours

Q1. In the year 2014, Chief Executive Mr. Roy of Sunny Ltd, a global internet communications company, announced an excellent set of results. Mr. Roy announced that, compared to 2013, sales had increased by 50%, profits by 100% and total assets by 80%. The dividend was to be doubled from the previous year. Three months later, Mr. Roy called a press conference to announce a restatement of the 2014 results. He said this was necessary because of some 'regrettable accounting errors'. He also disclosed that in fact the figures for 2014 were increases of 10% for sales, 20% for profits and 15% for total assets. The proposed dividend would now only be a modest 10% more than last year. Later that month, the company announced that following an internal investigation, there would be further restatements, all dramatically downwards, for the years 2012 and 2013. This caused another mass selling of shares of Sunny Ltd resulting in a final share value the following day of \$1. This represented a loss of shareholder value of \$12 billion from the peak share price.

Mr. Roy resigned and SEBI ordered an investigation into what had happened at Sunny Ltd. The shares were suspended by the stock exchange. A month later, Sunny Ltd. was declared bankrupt. Nothing was paid out to shareholders whilst suppliers received a fraction of the amounts due to them. The Chief Executive confessed to having orchestrated an accounting fraud for several years. He admitted to manipulating the firm's accounts to report profits that were more than 10 times the actual figures and reported a cash balance of US\$1 billion that was non-existent. Sunny Ltd. has also committed systemic fraud in its worldwide regulatory filings. For a multinational company with the illustrious Board and significant foreign and institutional shareholding, one would expect corporate governance of highest order; however, the reality was different.

Based on the above fact, answer the following:

(a) Is the given case an example of intentional fraud by the top executive of the Company? Can such frauds be reported under the Companies Act 2013? What are the penalties for not reporting of frauds under Companies Act 2013?

(4 MARKS)

(b) Can independent directors be held liable for frauds perpetrated by or with the support of the top management? Critically examine.

(4 MARKS)

(c) What is the role of audit committee in fraud risk oversight? Draft some questions which the audit committee consider to effectively manage fraud risks.

(4 MARKS)

Q2. A. Mr. Aditya was a director in a company. He resigned from the company in the year 2017.

The company issued certain cheques to Mr. Vihaan in the year 2019 which have been dishonoured and hence he has filed case against Mr. Aditya.

Will Mr. Vihaan succeed? Quote case law in support of your answer.

(6 MARKS)

Q2. B. Mr. Ram (operational creditor) supplied raw-materials to KPT Ltd. (corporate debtor). At the end of the month, he raised 3 bills regarding the supplies made. KPT Ltd. did not pay the amounts. Against which Mr. Ram filed application to NCLT seeking initiation of CIRP against it after issuing demand notice. NCLT accepted the application. KPT Ltd. challenged it on the ground that he had asked for further information on the material supplied by the operational creditor for each of the invoices raised, hence there is an existing dispute. Is this contention valid? Give reasons in support of your answer.

(6 MARKS)

Q3. A. Where an act or omission constitutes an offence under the Food and Safety Standards Act, 2006 as well as the Indian Penal Code 1860, Whether the offender can be prosecuted and punished under both the enactments? Quote relevant case law decided under this matter in support of your answer.

(6 MARKS)

Q3. B. "A Ltd.", "B Ltd." and "C Ltd", decided to enter into an arrangement to consolidate certain assets. As per the provision of Companies Act, the scheme needs Tribunal's approval to go ahead. Application was filed to the Tribunal, The scheme was approved by NCLT promptly.

Income tax department filed an application against the approved scheme contending that the scheme results in reduction of tax liability, and hence should not be allowed.

Is the contention of the department valid? Give case laws in support of your answers.

(6 MARKS)

Q4. A. Sony Ltd. entered into an agreement with M/s. BALH Enterprises, a sole proprietary concern. After 6 months of this agreement, the sole proprietary concern was converted into a Private Limited Co. named as BALH Pvt. Ltd. later on, some disputes arose between the Parties, and the same was referred to the arbitrator as per the agreement and an award was passed against Sony Ltd. It challenged the award mainly on the ground that the arbitration agreement was with the proprietary concern M/s. BALH Enterprises and not with BALH Pvt.

Ltd. Is this ground tenable to challenge the arbitral award? Quote relevant case law in support of your answer.

(6 MARKS)

Q4. B. Whether the Directors of the Company, who are receiving remuneration, come within the purview of “employee” under sub-section (9) of Section 2 of the Employees’ State Insurance Act, 1948 (‘the ESI Act’)? Explain with the help of a decided case law.

(6 MARKS)

Q5. A. The appellant is aggrieved by the order of the Whole Time Member where under it was directed to make Public announcement to acquire shares of YoYo Ltd. (Target Company) within a period of 45 days from the date of the order and to pay interest at the rate of ten percent per annum as detailed in the order. The appellant is promoter of the Target Company consisting of a consortium of individual promoters. It has appealed before the Securities Appellate Tribunal saying that the violation of the Takeover Regulation is only to the extent of 0.03% and that too due to transfer of shares between the promoters via open market, and thus the direction of the WTM to make public announcement to acquire shares would be Disproportionate. Will the appellant succeed?

(6 MARKS)

Q5. B. CCI ordered an investigation into an alleged cartelization by 3 companies namely Amar Ltd., Akbar Ltd. and Anthony Ltd. The DG conducted investigation and the documents of the abovementioned companies were seized. The companies filed a writ petition before the Bombay High Court and prayed setting aside of the search and seizure conducted by the DG. Will the petitioners succeed? Give reasons in support of your answer.

(6 MARKS)