aglasem.com

FOR CS EXECUTIVE EXAM PREPARATION

CS Executive 2023 Question Paper · Company Law and Practice

EXAM	YEAR	TYPE	SUBJECT
CS Executive	2023	Question Paper	Company Law and Practice

DATE

December 2023

NEW SYLLABUS

522

Roll No. .....

Time allowed : 3 hours ***Maximum marks : 100***

Total number of questions : 6 ***Total number of printed pages : 16***

NOTE : *Answer* ***ALL*** *Questions.*

Part–I

1. Case Study :

Anil, Sunil and Vaishali are close friends from a renowned business family. After doing their masters from IIM, Ahmadabad they decided to start e-commerce in commodities. However, they were not sure about the legal format in which they should start the business. On request, M/s AB & Associates, a firm of practicing Company Secretaries advised them to form a company limited by shares being the best suitable device for running the business. After complying with the legal formalities, the company in the name and style of ''Dynamic E-Commerce Ltd.'' (*hereinafter referred to as "the Company*'') was incorporated on 1st April, 2020 by seven subscribers (*including Anil, Sunil and Vaishali*) to the Memorandum and Articles of Association of the Company with the main object of carrying e-commerce in grains, grocery, and medicines throughout India.

The registered office of the company is situated in Pune, the State of Maharashtra (India).

The capital clause of the Memorandum of Association (*MOA*) provides as under :

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

''The authorised share capital of the company shall be ₹ 1,00,00,000''

The Articles of Association (*AOA*) contain the capital clause as below :

''The authorised share capital of the company shall be ₹ l,00,00,000 divided into 8,00,000 equity shares, carrying voting rights pari-passu of ₹ l0 each and 20,000 preference shares of ₹ 100 each.''

The company offered preference shares to the financial institution, its promoters, and a group of individuals on which rate of dividend shall be 10% as per the term of issue. The financial institution refused to subscribe to the issue of preference shares on the contention that MOA is ambiguous as it does not authorise the company to issue class of preference share and hence the act of offering preference shares is ultra vires the company.

Considering the growing business, the company wants to shift its registered office from Pune to Mumbai in the State of Maharashtra (India). The Managing Director of the company has been apprised by the Legal Officer that the company may shift its registered office, as proposed, by passing a unanimous board resolution and filing necessary forms with the Registrar of Companies.

Encouraged with the financial results of last three years the Board of directors of the company intends to declare interim dividend for the first time in its next board meeting to be held on 31st May, 2023 out of the profit earned for the year 2022-23.

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

: 3 :

The balances extracted from the financial statement for the preceding year are as below :

Particulars	**Financial Results for the year ending 31st March, 2023 (₹ in lakh)**
Net Profit for the year after depreciation but before interest and tax (NPBIT)	80.00
Charge of Interest on the profit on term loan	5.00
Fully Paid-up equity share capital	60.00
Fully Paid-up Preference share capital	16.00
Free Reserves	10.00
Term Loan	50.00
Contingent Liabilities for which profit is to be set aside	24.65

Assume Income-tax provision @ 25%

Based on the above facts answer the following :

(*a*) Whether the contention of the financial institution in refusing to subscribe to the issue of preference shares of the company is valid ?

(*b*) Referring to the provisions of the Companies Act, 2013 advise the company of the compliance requirement for shifting of its registered office from Pune to Mumbai.

(*c*) Referring to the provisions of the Companies Act, 2013 read with Secretarial Standard-3 (SS-3) and requirement of the Board. Explain the meaning of ''Divisible Profit'' and can interim dividend be paid by the company out of free reserves, in the event of loss or inadequacy of profit during a financial year ?

(*5 marks each*)

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

2. (*a*) The recognised trade union of Water Purifier Ltd. made an application before the Tribunal seeking order for investigation of the company on the ground that the company has defaulted the payment of dues of the workmen since long and the business of the company is being conducted otherwise for a fraudulent or unlawful purpose. In response, the company objected to the application and claimed that the recognised trade union not being the members or creditors of the company has no locus standi to make such application and is liable for dismissal. Examine the admissibility of the application of recognised trade union submitted before the Tribunal seeking investigation of the company.

(*3 marks*)

(*b*) AB Pvt. Ltd. is unlisted material subsidiary of HD Ltd. which is a listed entity. It is the strong conviction of the Company Secretary of HD Ltd. that secretarial audit for AB Pvt. Ltd. is not required for two reasons such that it is a private company and secondly an unlisted company. Based on the information and in-put data provided above, referring to the provisions of the Companies Act, 2013 you are requested to examine/analyse and answer the following :

Explaining the requirement and timeline for submission of secretarial compliance report by a listed entity, state whether the Secretarial Audit of AB Pvt. Ltd. is voluntary in light of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ? Also, explain the meaning of material subsidiary.

(*3 marks*)

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

(*c*) Edge Ltd. had borrowed ₹ 50 crore from a scheduled bank and repaid entire loan amount along with interest thereon. The company wants to file satisfaction of charge with the Registrar only after receiving no due certificate and a release letter from the bank. If company delays the filing of satisfaction of charge for the default of bank in not issuing these documents, whether the company will be liable for late filing of satisfaction of charge under the Companies Act, 2013 ?

(*3 marks*)

(*d*) Mithi Sugar Limited has on its Board, four directors viz A, B, C and D. In addition, the company has Mr. R as the Managing Director. The company also has a full time Company Secretary, Mr. Anupam, on its rolls. The financial statements of the company for the year ended 31st March, 2023 were authenticated by two of the directors, Mr. A and Mr. B under their signatures.

Referring to the provisions of the Companies Act, 2023 :

(*i*) Examine the validity of the authentication of the Financial Statement including Balance Sheet and Statement of Profit & Loss etc. and the Boards Report.

(*3 marks*)

(*ii*) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Financial Statement including Balance Sheet and Statement of Profit & Loss and the Board's Report ?

(*3 marks*)

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

3. (*a*) The period of 10 years is over from taking over X Ltd. (the transferor company) by Y Ltd. (the transferee company) by acquiring its shares and hence, a Board resolution has been passed by the transferee company in the meeting held in June, 2023 to destroy the books and papers (the record) of the transferor company considering the provisions relating to preservation of books of account of the company for 8 years. Referring to the provisions of the Companies Act, 2013, Decide the validity of the decision of the Board of the transferee company.

(*5 marks*)

(*b*) Sanjay Diagnostic Limited (the Company) was registered in Bihar under the provisions of the Companies Act, 2013. Its future project is to diversify into other profitable business, which is unique and provide sustainable business growth. Due to the recession in the industry and excessive competition from the seasoned player, the Company has no significant accounting transaction and business activities during the last two financial years. However, the Company has been regular in filing its financial statements and annual returns with the Registrar of Companies, Patna by making payment of applicable filing fees. The Company decided to file the application for obtaining the status of dormant company in line with the relevant provision of the Companies Act, 2013. The Company instead of passing a special resolution to this effect in the general meeting of the Company issued notice to all the shareholders of the Company for this purpose and obtained consent of 82% of shareholders in value. Referring the provisions of the Companies Act, 2013 and Rules made there under answer the following :

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

(*i*) Explain the term ''Dormant Company''.

(*ii*) Whether the payment of applicable filing fees to the Registrar of Companies (ROC) could be considered as significant accounting transaction under the Companies Act, 2013.

(*iii*) Whether the application made by Sanjay Diagnostic Limited is in order, in the absence of passing a special resolution ?

(*5 marks*)

(*c*) XYZ Ltd. is an eligible company and has accepted during the financial year ended 31st March, 2023 the following receipts :

S.No.	Receipts
1.	Amount received against issue of commercial paper
2.	Amount received from a person who, at the time of the receipt of the amount, was a director of the company and has furnished a written declaration that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.
3.	Amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit.
4.	Term deposits received from members for 2 years
5.	Deposits from public for 36 months.

Referring to the provisions of the Companies Act, 2013 you are requested to state, which of the above receipts will be considered as deposits and which of them will be reported in return DPT-3 by the company ?

(*5 marks*)

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

Attempt all parts of either Q. No. 4 or Q. No. 4A

4. (*a*) Mr. Ranjan is an employee of the company Moon Limited and investigation is going on him under the provisions of the Companies Act, 2013. The company wants to terminate the employee on the ground of the investigation going against him. They have filed the application to tribunal for approval of termination. The Company has not received any reply from the tribunal within 30 days of filing an application. The Company consider it as a deemed approval and terminated Mr. Ranjan.

(*i*) Is the contention of company being valid in law ?

(*ii*) What is remedy available to Mr. Ranjan ?

(*iii*) What is remedy available to Mr. Ranjan, if reply of Tribunal has been received within 30 days of application ?

(*5 marks*)

(*b*) Ankur Steel Limited is a manufacturer of stainless steel. It had raised ₹ 400 crores through public issue of its equity shares for starting one more unit of steel manufacturing in Odisha. It has utilized ₹ 100 crores. Due to reduction in customs duty on import of steel, imported steel from China are cheaper than its own manufacturing. Since there is no scope for growth and expansion in the existing business, management of the Company thought of utilizing remaining amount in software development business (including Artificial Intelligence) by adding a new object in the Company's its memorandum of association.

As per the provisions of the Companies Act, 2013 can it do so ? If no, what advise will you give to the company ? If yes, then explain the various steps to be followed by the company.

(*5 marks*)

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

(*c*) Analyse the eligibility of a minor to become member of the company and other issues incidental thereto in the following scenarios :

(*i*) Minor becoming member by agreement signed by him

(*ii*) Minor becoming member by allotment or transfer of fully paid-up shares through guardian

(*iii*) Minor becoming member by transfer of partly paid-up shares and liability of future calls thereon

(*iv*) Restoration of dividend to the company, if he repudiates the agreement of membership on attaining majority.

(*5 marks*)

Or (Alternate Question No. 4A)

4A. (*a*) ''In a company limited by shares all members will ordinarily be the shareholders but all shareholders need not be the members, *ipso facto*.'' Differentiate between 'members' and 'shareholders' considering the provisions of the Companies Act, 2013

(*b*) Provide various grounds on which the investigation is assigned to Serious Fraud Investigation Office (SFIO) ?

(*c*) Anil, Sunil and Sunita are proposed to be first directors in the Articles of Association of the proposed company. However, as they do not have DIN would not be able to assume office of director immediately on incorporation of the company. Is there any way out available to obtain DIN simultaneously with incorporation of the company so that the company, on incorporation, will meet the requirement of having minimum number of directors ? Advice, referring to the provisions of the Companies Act, 2013.

(*5 marks each*)

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

Part–II

5. Facts of the Case :

ABC Limited was incorporated on 14th October 2020 with the objective of manufacturing of Cement. The plant was commissioned in April 2021, at a cost of ₹ 580 Crores at Somnath, Gujarat. The Company was promoted by Chahal group. It is important to note that at present, ABC Limited is not a listed Company.

Over a period of time, ABC Limited has grown to become one of India's largest manufacturers and exporters of cement and having 800 members. The Quorum fixed by the Articles of ABC Limited was 7 members present.

In line with its long-term vision, the company has diversified into Home Textiles, Cotton Yarn, Industrial/Edible Salt and Lignite Mining.

The current composition of the Board of Directors of ABC Limited is as follows :

- Total number of directors : 10
- Independent Directors : 5 (including one woman director)
- Whole-Time Directors : 3 (including Managing Director, Executive Director - Finance, and Executive Director - Operations)
- Non-Executive Promoter Directors : 2 (1 Chairman and 1 Vice Chairman).

The Board approved Notice to call lst Annual General Meeting on 24th December 2021 at 2.30 P.M. (IST) to approve several resolutions including adoption of audited financial statements of the Company for the financial year ended March 3l, 2021; approval regarding appointment of directors etc. Record Date/Cut-off date for said AGM was fixed on l7th December 2021.

Contd. .....

522

Notice of the AGM contains Notes related to Proxy, which is reproduced as under :

A MEMBER ENTITLED TO ATTEND AND VOTE AT THE MEETING IS ENTITLED TO APPOINT A PROXY TO ATTEND AND VOTE INSTEAD OF HIMSELF. A PROXY NEED NOT BE A MEMBER. PROXIES IN ORDER TO BE EFFECTIVE MUST BE DEPOSITED AT THE REGISTERED OFFICE OF THE COMPANY NOT LESS THAN FORTY EIGHT HOURS BEFORE THE COMMENCEMENT OF THE MEETING. A PROXY FORM IS ENCLOSED WITH THIS NOTICE.

Based on the above facts of the case study answer the following questions :

(*a*) ABC Limited issued a notice on 1st December, 2021 to hold its 1st Annual General Meeting (AGM) on 24th December, 2021. Check the validity of the notice referring to the provisions of the relevant act and secretarial standards in case it is sent by post.

(*5 marks*)

(*b*) Based on the above integrated case and after considering following details of the persons present in the general meeting of ABC Limited, check whether the quorum of the Annual General Meeting is validly constituted or not.

(*i*) Mr. A, the representative of Governor of Gujarat.

(*ii*) Mr. B & Mr. C are preference shareholders.

(*iii*) Mr. D representing PQR Ltd. And XYZ Ltd.

(*iv*) Mr. E, Mr. F, Mr. G and Mr. H are proxies of shareholders

(*5 marks*)

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

(*c*) Mr. S, a shareholder of ABC Limited, issued two Proxies in respect of the shares held by him in favour of Mr. 'X' and Mr. 'Y'. The proxy in favour of 'X' was lodged on 22nd December 2021 at 10.00 A.M. and the one in favour of Mr. Y was lodged on 23rd December 2021 at 3.30 P.M. The company rejected both the proxies in favour of Mr. X as well as Mr. Y. Based on the integrated case and after considering above mentioned details regarding proxies, is the rejection by the company in order ? Your answer should be based on the applicable provisions of the Companies Act, 2013 and Secretarial Standards. You are also requested to write the provisions related to inspection of proxies.

(*5 marks*)

(*d*) At a General meeting of the company, a matter was to be passed by a special resolution. Out of 400 members present, 200 members voted in favour of the resolution, 50 members voted against it and 50 members' votes were found invalid. The remaining 100 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act. 2013, examine the validity of the Chairman's declaration ?

(*5 marks*)

Attempt all parts of either Q. No. 6 or Q. No. 6A

6. (*a*) PQR Limited wants to constitute an Audit Committee in the ensuing Board meeting of the Company. Pursuant to the applicable provisions of the Companies Act. 2013, draft a board resolution covering the following matters :

(*i*) Member of the Audit Committee

(*ii*) Chairman of the Audit Committee

(*iii*) Quorum for a meeting of the Audit Committee

(*iv*) Any 2 functions of the said Committee.

(*5 marks*)

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

(*b*) SNS Limited is expanding its business in UAE and to look after the business affairs abroad proposes to appoint Vikram as an additional director. He is M. Tech and had done his executive MBA from IIM, Bangalore and has a working experience in corporate sector at a top-management level. Since the next Board meeting is not likely to be held early it is proposed to appoint him as an additional director by obtaining a board approval through resolution by circulation. You are, being a company secretary of the company, requested to draft a resolution by circulation along with brief note thereon for consideration and approval of the directors in compliance with the provisions of the Companies Act, 2013.

(*5 marks*)

(*c*) Priya Garments Limited (the company) having its registered office at Hyderabad (India) has received, in accordance with the provisions of section 115 of the Act, a special notice from Revati, a member holding 50,000 equity shares aggregating to 5% of shareholding of the Company's voting capital for removal of Srinivasan, a director of the company being indulged in the fraudulent activities detrimental to the interest of the company. Accepting the requisition, the Board of directors, passed a resolution at its meeting held on 30th November, 2023 to convene an extra-ordinary general meeting of the company on Saturday, the 30th December, 2023 at l0 a.m. at the registered office of the company at Hyderabad for removal of Srinivasan on requisition of the member. You being a Company Secretary of the company is requested to prepare a draft notice of extra-ordinary general meeting to be issued on lst December, 2023 along with explanatory note for removal of Srinivasan on requisition of the member as required under the Companies Act, 2013.

(*5 marks*)

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com Page 13 of 16

522

(*d*) You are the Company Secretary of Himachal Chemicals Limited. Pursuant to the applicable provisions of the Companies Act, 2013, draft a board resolution to approve and adopt a new CSR Policy of the Company.

(*5 marks*)

OR (Alternate question to Q. No. 6A)

6A. (*i*) Referring to the provisions of the Companies Act. 2013 read with SS-1 explain, whether the board meeting can be convened at a shorter notice and what are the conditions subject to which such meeting may be held ? When shall the decision of the Board taken at the meeting called at a shorter notice come into effect, if the company does not have an independent director ?

Also, state the venue for the Board meeting, if conducted through video conferencing/ audio-video means where directors participated from the different places/cities.

(*5 marks*)

(*ii*) JK Scooters Ltd. is a listed company and wants to appoint a small shareholders' directors *suo motu*. You are being a Company Secretary of the company apprise the managing director on the following points, referring to the provisions of the Companies Act, 2013.

(*a*) Is it mandatory for a listed company to appoint small shareholders' director with or without receiving a notice from requisite number of such shareholders ?

(*b*) Tenure of office and retiring by rotation ?

(*c*) Number of small shareholders' directorship.

(*d*) Small shareholders' director to be an independent director.

(*5 marks*)

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

6A. Financial information for Questions 6A(*iii*) & 6A(*iv*) :

You are CFO of GCL Textiles Limited. The last three years' Balance Sheet of GCL Textiles Limited contains the following financial information and figures :

(All amount in ₹)

	As at 31.03.2021	As at 31.03.2022	As at 31.03.2023
Paid up capital	25,00,000	25,00,000	37,50,000
General Reserve	20,00,000	21,25,000	25,00,000
Credit Balance in Profit & Loss account	2,50,000	3,75,000	5,00,000
Debenture Redemption Reserve	7,50,000	10,00,000	12,50,000
Securities Premium	1,00,000	1,00,000	1,00,000
Secured Loans	5,00,000	7,50,000	15,00,000

On going through other records of the Company, the following is also determined :

Net profit for the year (as calculated in accordance with the provisions of the Companies Act, 2013)	6,25,000	9,50,000	17,25,000

In the ensuing Board Meeting of GCL Textiles Limited scheduled to be held on 15th October 2023, among other items of agenda, following items are also appearing :

(*a*) To decide about borrowing from Banks/Financial institutions on long-term basis.

(*b*) To decide about contributions to be made to charitable funds.

aglasem.com For more Question Papers, Sample Papers, Notes & Syllabus visit aglasem.com

522

Based on above information, you are required to find out as per the provisions of the Companies Act, 2013, the following :

(*iii*) Amount upto which the Board of Directors of GCL Textiles Limited can borrow from Banks/Financial institution without seeking the approval of members in general meeting; and

(*5 marks*)

(*iv*) The amount upto which the Board of Directors of GCL Textiles Limited can contribute to Charitable funds during the financial year 2023-24 without seeking the approval of members in general meeting.

(*5 marks*)

———— o ————

2/2023/CLP/NS