NATIONAL LAW UNIVERSITY, DELHI

LL.M., Semester-I (Batch of 2020)

End Semester Online Examinations, January-2021

Paper: Advanced Corporate Law

Time: 48 hours **Total Marks: 50**

Instructions:

1. Mail your assignments only to **submissions.llm@nludelhi.ac.in**
2. All questions are compulsory. Each question carries equal marks**.**
3. The answers must be substantiated with relevant statutory provisions and discussion of legal precedents. A mere correct answer does not help unless the above requirements are met. Please avoid a cut and paste strategy to answer questions as it would have a bearing on your final score.
4. This is an open book exam. Students are free to consult their class notes as well as assigned reading materials.
5. No clarification shall be sought on the question paper.
6. Mention ONLY Name, Roll No. and Subject Paper on the Cover/First page. Start writing your answers from the next/second page only. **Do not** mention your name and roll no on any other page.

Q.1 Gyanesh has been convicted of securities fraud and the Securities and Exchange Board of India has debarred him from any activity in the Indian securities market in any form whatsoever for a period of two years. Gyanesh's wife Sudha, who was a chartered accountant and his son Arpit, a management graduate, formed a company with the name Gyan-Sudha Securities Pvt. Ltd. for the purpose of dealing in the listed securities and other trading/ brokerage operations as may be available in India and abroad. The initial capital of the company is subscribed to by the duo by taking a loan from Gyanesh and as a security have pledged their shares with him. Most of the employees of the new venture are former employees of Gyanesh, who has also sold the company's confidential information regarding his trade secrets, client list, investment strategies etc. Gyanesh regularly accompanies his wife and son to the office and though he does not have any room allotted to him, uses one of the conference rooms for the purpose of his business, which is derivatives trading in the commodities market, options trading in foreign securities and trading in foreign exchange derivatives using the company's trading link. The profits generated from the operations are invested in convertible and non-convertible debentures of the company. The employees of the company pay due deference to their former employer and along with Sudha and Arpit were known to consult him on their trading strategies. A doctor, Dr. Mhatre, who suffers a trading loss when using the company as a sub-broker, complains to the SEBI. SEBI suspects its orders are being breached and calls for an explanation. Prepare briefs detailing legal arguments for Dr. Mhatre and Gyanesh on the matter.

Q.2 Arindam Sengupta is a reputed retired bureaucrat, a former finance secretary, who has been contacted by Annapoorna Bank Ltd. to serve on its board of directors as an independent director. The rules of business of the company specify that loans of a value above Rs. 100 Crores need to be sanctioned by the board. Arindam's cousin, Himanshu Dasgupta applies for a loan of Rs 250 crores from the Bank to construct an office complex on his ancestral land with it as a security. Arindam recuses himself from the board proceedings with the plea of being a relative to the applicant. What he did not state was that he was privy to a simmering family dispute as to the ownership of that plot of land. The bank sanctioned the loan with a few conditions, including that the land be transferred to a company fully owned by Himanshu and his personal guarantee backed by a pledge of the shares to the bank in addition to mortgage of the land. The construction of the office block started with the sanctioned loan and when it was nearing completion, Himanshu entered into a long term lease with Agora Software Services Ltd. which made newspaper headlines due to the size of the deal. Himanshus's sister and aunt, who also had claims on the land but were settled in New York and Frankfurt, and were negotiating with Himanshu, came to know of his actions and sought a court decree to declare the mortgage and lease null and void. The court gives notice to all parties. While Agora used a term of the lease deed to walk out of the agreement, the bank was stuck with the loan which after a few months turns into a non performing asset. Not knowing how to recover the loan, the bank sends a notice to Arindam as to the serious breach by him of the duties owed by him in not intimating the bank of the defect in Himanshu Dasgupta's title. Prepare separate briefs with legal arguments for Arindam Sengupta and Annaporna Bank Ltd.

Q.3 Excel Partners is a small but a well known venture capital fund manager which provides seed capital and startup capital to budding entrepreneurs in the initial stage of the venture and then thereafter, to some of them it provides equity capital for expansion. The fund, in whichsoever company it invests, unless it buys shares issued to another person, always insists on a clause requiring the prior consent of its nominee director for the investee company to enter a new line of business irrespective of its MOA, or selling its business/undertaking, or making investment commitments above 25% of its capital after factoring its accumulated undistributed profits and losses, without the consent of its nominee director on the board of the company. One of its general partners is Haroon Rashid. Haroon has been nominated by the firm on the board of 6 investee companies of the firm, including two by the name of Chandraprabha Chemicals Ltd. and Roshan Medications Ltd. In the former, the fund has a 15% equity stake while in the latter, the fund has optionally convertible debentures in addition to participative non-cumulative preference shares which amount to 20% of the share capital of the company. The debentures can be converted into equity shares at any time prior to redemption and at a fixed price. If the conversion option is exercised then the fund would end up owning 26% of the company.

Covid-19 has started a race to develop vaccines and a scientist approaches Chandraprabha Chemicals Ltd., which is in essence a manufacturer of bulk drugs on contract, to develop a vaccine. The proposal is placed with the board for consideration, and while the other directors were in favour of the proposal, with two representing other venture capital funds (Multipliers and Finale Bound) with the same board veto rights, Haroon voted against the proposal arguing that it was not the core competence of the company and the uncertainty of vaccine development process, the possibility of herd immunity prior to vaccine coming into the market and the plethora of financially stronger companies with marketing network in vaccine development race would mean that there is a big chance that the attempt would be financially ruinous for Chandraprabha Chemicals Ltd. On the rejection of the proposal, the scientist is looking at options and is contacted by Roshan Medications Ltd., a distributor of medical products, including vaccines, requiring cold storage solutions and which had established a vaccine production facility which was grossly underutilized. The two entered into a vaccine development agreement. The vaccine passed the phase I and II trials. At this stage Excel Partners converts its debentures into equity shares and exits the company by selling the equity shares and the preference shares, generating a return of 250% for the two year old investment. Roshan Medications Ltd. conducts the phase III trials of the vaccine, which proved to be a failure as the efficacy level was found to be a mere 25%, much below the 50% level required for the drug controller to give its approval. Roshan Medications Ltd. in the process of vaccine development and trials has incurred a cost of Rs. 145 crores which is now a loss. The suppliers' payment is delayed due to the liquidity crunch consequent to the loss and they are waiting for the moratorium on insolvency proceedings to end for them to file a petition to dissolve it. On the other hand, Multipliers and Finale Bound, are jealous of the returns generated by Excel Partners and sue Roshan Medications Ltd. and Excel Partners. Prepare separate legal briefs for Multipliers fund, Roshan Medications and Excel Partners.

Q.4 Sakha Fashions Private Ltd., is a manufacturer of garments for men, promoted by Harsh Pandey and his wife Smita Gupta who were its directors with both having equal stake in the company (25000 shares of face value of Rs. 100 each). The articles of the company provided that the change in ownership of shares, by assignment/transfer/devolution/succession would require the prior permission of the board. Though the company products were appreciated in some circles, it was burning cash as it had been unable to create the buzz for it to be able to price its garments high or increase its sale to a threshold where the cost could be recovered. It sold products to the retail outlets giving them 75 days trade credit (much more than the normal practice of 45 days) so as to persuade the retailers to store and display its products. Retailers, instead of paying for the unsold stock at the expiry of 75 day period, would contrary to the written agreement return it to Sakha Fashions Pvt. Ltd. And Sakha would take the stock back and in lieu give another set of clothing returned by another retailer. This circular sale of stock concealed the financial position of the company. The company showed a profit but by any reasonable principles of accounts was making losses. This mismatch between its production figures and sales figures due to circular trading could have been 3nraveled by any reasonably diligent auditor but this was not pointed out by its auditor, Lakshman and Persaud, who unfortunately also found nothing amiss in the fact that the salaries of the directors was in arrears. The two directors took 10000 shares of the company of face value of Rs 100 at a premium of Rs.400 in lieu of their salary dues. Thereafter, the board of the company was able to persuade Samar Verma, a successful movie star to invest in the company and also advertise for its products, with the endorsement fee being paid in terms of issuance of fresh participative preference shares. Samar Verma, in recognition of the fact that the company was a profit making one, had a brand value reflected in the sales figures and recognizing that the company was in a position in which it was due to the promoter directors and their imagination and diligence, subscribed to 20000 shares of the face value of Rs. 100 at a premium of Rs. 900 through a wholly owned private company. The fortunes of the company changed with the endorsement by Samar Verma and its products started moving faster with the retailers, who stopped demanding special treatment in form of longer repayment periods topped with return of products (contrary to contract) on its non-sale. The book value of company's shares has increased to Rs600, without factoring in the company's goodwill. Samar Verma unfortunately dies in an accident after 5 years and his sister, Jyotsana Verma, is a testamentary successor to his estate. The company's directors feel the need to introduce a new brand endorser/ambassador. But at the same time, they feel the dead weight of Samar Verma's shares in the company which might not be taken kindly by any new star due to the petty rivalries in the tinsel town. They seek to reduce the company's capital by redeeming the preference shares of the company issued to Samar Verma and to cancel the equity shares issued to him by paying the book price. A special resolution to this effect is passed by the shareholders. Jyotsana's investigations reveal the company's state of affairs at the time when her brother got associated with the company and she is not willing to take her compulsory exclusion/buyout without a fight. She intends to contest the reduction of capital, preference as well as equity, and the terms of issuance in the first place and compensation in lieu of it in the Tribunal. Prepare separate legal arguments for Jyotsana Verma, the company (including its promoters) and the auditors Lakshman and Persaud.