NATIONAL LAW UNIVERSITY JODHPUR

End Term Examination November – 2024
Semester – UG V Semester
Subject: Company Law - I

Time: 3 hours **Marks: 100 marks**

Instructions:

i. *All the questions carry **equal marks**.*
ii. *The students are required to attempt **Five** questions only.*
iii. ***QUESTION NOS. 1, 3 & 6 ARE MANDATORY TO ATTEMPT.***
iv. *The students may choose to attempt <u>any **Two questions**</u>* from the remaining ***<u>Three</u>*** <u>questions.</u>
v. *Please substantiate your statement(s)/argument(s) with relevant case laws, whenever necessary.*
vi. *Considering the Factual based Questions, the Students may kindly be permitted to either **'Strikeout'/'Underline'** on the question paper **<u>only for Question Nos. 1, 3 & 6</u>**.*

Q.1. Oceania is a country in Asia, with a robust economic structure and accordingly has enacted the revamped Companies Act, 2013 for modernising its legal framework. The present facts of the matter arise out of the Appeal against the Order of the National Company Law Tribunal's (*hereinafter* NCLT) order dated 19.05.2023 passed in the matter of Daniel Nesta (*hereinafter* Applicant No. 1) and Viktor Grey (*hereinafter* Applicant No. 2) (Minority Shareholder of Minosha) v. Minosha India Ltd.

<u>Background Facts:</u>

Minosha Oceania Ltd (*hereinafter* the Company) is a public limited company incorporated on 22/10/1993 with Registrar of Companies, Mumbaland. Article 57 of its Articles of Association of the Company allows for reduction of the share capital in any manner for the time being authorized by law.

Company passed a special resolution at the Annual General Meeting of its shareholders held on 29th September, 2022 for reduction of its issued, subscribed and paid-up share capital of the Company from Rs. 47,90,67,840/- comprising of 4,79,06,784 Equity Shares of Rs. 10/- to Rs. 45,32,98,040/- comprising of 4,53,29,804 Equity Shares of Rs. 10/- by cancelling and extinguishing in aggregate, 5.38% of the total issued, subscribed and paid up equity share capital of the Company comprising of 25,76,980 Equity Shares of Rs. 10/- held by the public shareholders of the Company (i.e., the holders of the equity shares of the Company other than the promoter group shareholders of the Company) by paying a sum aggregating to Rs. 79,37.09,840/- (the compensation amount was inclusive of the Nominal Value of Rs. 10/- and a premium of Rs. 298/- per equity share). Consequently, it filed an application for affirmation of the said resolution on 03rd October, 2022.

<u>Rationale provided by the Company for the Reduction</u>

The Company went into Corporate Insolvency Resolution Process (CIRP) pursuant to admission of Insolvency Petition by the Hon'ble National Company Law Tribunal, Mumbaland Bench (NCLT) vide its Order dated May 14, 2018. The approved resolution plan had a mandatory condition concerning the delisting of the equity shares. Accordingly, equity shares of the Company were delisted from OSE Limited As a

result, the equity shares of the Company has lost its marketability. In view of this, many public shareholders have expressed their desire to tender/transfer their equity shares they hold in the Company as they are unable to dispose of the same. In view of this, the Company is desirous of providing the Public Shareholders an exit opportunity so as to provide liquidity to such shareholders with a fair and just valuation of the Company.

As on September 22, 2022, out of 12911 Public Shareholders (holding, in aggregate, 5.38% of the total paid-up equity share capital of the Company), nearly 9693 Public Shareholders currently hold less than or equal to 100 equity shares and 2638 Public Shareholders currently hold more than 100 but less than or equal to 500 equity shares.

The aforesaid Capital Reduction will give an opportunity to the Public Shareholders of the Company to exit from the Company at a fair valuation as the equity shares held by them in the Company are otherwise not marketable or tradeable since the delisting of the shares. Furthermore, the said reduction will also enable the Company to control costs which are presently being incurred to service the large number of shareholders and manage its operations efficiently.

Factum of Dispute

During the pendency of the application, Mr. Daniel Nesta, a public shareholder of the company filed an Intervention Petition, raising objections with respect to the said reduction in interest of the right of the minority. Applicant No. 1 had acquired 10,000 (Ten Thousand) equity shares of the Company in 23rd October, 2016 through stock exchange. Pursuant to the implementation of the resolution plan, the share capital of the Company was reorganized, and the shareholding of the Applicant No. 1 was reduced from 10,000 equity shares to 4,000 equity shares.

Also, the Applicant No. 2 had acquired 10,000 equity shares of the Company on 21st April, 2016 through stock exchange. He further acquired an additional 10,000 equity shares on 23rd April, 2016. Pursuant to the implementation of the resolution plan, the share capital of the Company was reorganized, and the shareholding of the Applicant No. 2 was reduced from 20,000 equity shares to 8,000 equity shares.

It is submitted that the Company vide Agenda No. 4 of the Notice of the meeting dated 29th September, 2022 proposed a resolution for the reduction of equity shares of the Company. The explanatory statement to the said Notice provided that

'*There is no trading platform available to the shareholders and the equity shares of the Company have lost its marketability. In view of this, many public shareholders have expressed their desire to tender/transfer their equity shares they hold in the Company as they are unable to dispose of the same. In view of this, the Company is desirous of providing the Public Shareholders an exit opportunity so as to provide liquidity to such shareholders with a fair and just valuation of the Company*'.

Applicant No. 1 and Applicant No. 2 raised an objection on said Agenda Item No. 4, through an e-mail dated 27th September, 2022, and 28th September, 2022, respectively, addressed to the Company and its Board of Directors. The Applicants stated to the Management of the Company that they are being compelled to sell shares in the company by way of reduction of share capital and requested that they wish to continue being a Shareholder and see the growth of the Company in the coming years along with their investment.

However, the Company failed to provide an adequate response to the aforementioned communication. That Applicants, after holding an AGM, again approached to the management of the Company via emails dated 30th September, 2022, and requested to provide an option to those shareholders who would want to remain invested in the company. However, the Company failed to provide an adequate resolution for the concern raised by the Applicants, and the issue remains unresolved.

The Applicants further argued that,

"*The proposed reduction is discriminatory, unfair and mal fide and is aimed at extinguishing the class of public shareholders, the consequential value of the investments made by Applicant No. 1 was reduced from Rs. 27 Lakhs to that Rs. 12.32 lakh; the same for Applicant No. 2 witnessed a reduction from the original investment of Rs. 74.33 lakhs to Rs. 24.64 lakhs, pursuant to resolution for reduction. Furthermore, it was imperative to hold a separate meeting of non-promoters and public shareholders where minority shareholders would have got an opportunity to assent or dissent on the capital reduction scheme. The majority shareholders cannot squeeze out minority shareholders compulsorily and without having a say in the matter, and the company ought to have given an option to the unwilling dissenting shareholders of the company who chose to retain their shareholding in the company.*"

Upon perusal of the matter, the NCLT, Mumbaiand Bench affirmed the reduction of the Share capital. Aggrieved by the NCLT's order, the Applicants have filed an appeal to the NCLAT (i.e., the Appellate Authority) seeking the reversal of the Reduction scheme passed by the Company. Being the Chairperson of the NCLAT decide the appeal with the use of cases and reasoned arguments. **(Marks 20)**

Q.2. Give a detailed account on the Position of Pre-Incorporation Contracts under Companies Act, 2013. **(Marks 20)**

Q.3. Caladorn is a country situated in the tropical continent of Solara. It is an erstwhile colony of the Solaris Empire; however, it achieved its independence in the year 1996. Upon achieving independence and pursuant to the General Elections of 1999, elected Mr. Titus Aurelius as its Prime Minister. Mr. Aurelius, upon his election, initiated a slew of economic reforms. One of these reforms resulted in the enactment of the Serica Companies (Regulatory Framework) Act, 2010 [hereinafter 'Companies Act, 2010'], which acted as the principal legislation for regulating all the Companies within the territory of Caladorn. The government was keen on enhancing its prowess in the field of sustainable green practices.

In 2003, it entered into an Economic Co-operation and Partnership Agreement (hereinafter BIT) with Elysium (a neighbouring country of Serica). Under the BIT, the companies of Serica were allowed to invest in companies incorporated in Elysium and vice-versa. Pursuant to the signing of the BIT, on 24th February 2003, Phoenix Energy Co. Ltd. (hereinafter 'Phoenix Energy') entered into a Share Subscription Agreement with Terra Deep Resources Ltd. (hereinafter 'Terra') for 9% equity shares. Furthermore, a debenture deed was concluded between both companies on the same date, under which Phoenix Energy was issued CCDs worth E$ 200 million (amounting to 21.3% equity upon conversion), and the maturity period of the CCDs was set at 18 years.

Caladorn is a country situated in the tropical continent of Solara. It is well endowed with natural resources; however, it is most famous for the natural resource 'Aetherium'

(colloquially known as 'Skyglass'), a key ingredient in the refractor shields developed for satellites and space probes. Hence, mining of the said resource is highly regulated. Recently, a significant deposit (an estimated 2500 million MT) of Skyglass has been discovered in the Tempest Isles province of Caladorn. The Carver Government, with an intent to maximize the economic value, made a public announcement seeking bids for issuing mining licenses for the same on 27th November 2018.

Titan Mercantile Group Ltd. (hereinafter 'Titan Group') is a conglomerate company incorporated under the colonial legislation of Companies Act, 1956, and has a wide range of businesses through its various subsidiaries. In 2010, Titan Group entered into a Multi-Party Joint Venture Agreement (hereinafter the 'Agreement') with Ironridge Heavy Engineering Enterprises (Caladorn) LLC. (hereinafter 'Ironridge'), Titan Heavy Engineering & Technology Inc. Ltd. (hereinafter 'THETIL'), Aeris Deep Earth Explorations Pvt. Ltd. (hereinafter 'Aeris'), and Cobalt Heavy Earth Minerals Ltd. (hereinafter 'Cobalt'). The agreement led to the incorporation of Avalon Mines and Minerals Pvt. Ltd. (hereinafter 'Avalon/JV') in accordance with the laws of Caladorn.

The Shareholding Pattern of the JV is as follows:

(a) Titan Group - 45.23%
(b) Ironridge Heavy Engineering Enterprises (Caladorn) LLC - 15.27%
(c) Titan Heavy Engineering & Technology Inc. Ltd. (hereinafter THETIL) - 12.77%
(d) Aeris Deep Earth Explorations Pvt. Ltd. (Aeris) - 11%
(e) Cobalt Heavy Earth Minerals Ltd. (hereinafter CHML) - 15.73%

In 2013, Titan Group floated Titan Precious Stones and Minerals Pvt. Ltd. (hereinafter 'Titan Minerals Pvt. Ltd.'), where it owns 99% shares, with the remaining 1% shares being divided equally (0.5% each) between Titan Industrial Ltd. (hereinafter 'TIL') and Titan Heavy Electrical Industries Ltd. (hereinafter 'THEL').

Titan Group holds 15% shares in TIL with the right to a negative veto and the right to appoint 1 Wholetime Director and the Chairman of the Board at the Board Meetings. TIL holds majority shareholding in THETIL (50.01%), which in turn holds 20% shares in Aeris and 10% shares in THEL along with the appointment of 4 out of 9 directors on the board, including the Managing Director. In 2019, Mr. Faelan Draven, Managing Director of TIL, was appointed to the Board of Titan Group in the capacity of Managing Director.

Pursuant to the public announcement made by the Government of Caladorn on 27th November 2021, Aeris had placed the winning bid and had won the mining rights to the Skyglass mines in the Tempest Isles province. On 29th May 2023, the CEOs of Aeris and Titan Minerals Pvt. Ltd. held a meeting to discuss the viability of a proposed contract to be signed between the two companies, regarding the sale of 'Skyglass' by Aeris to Titan Minerals Pvt. Ltd. After three months of negotiations, the sale price was fixed at CS$ 7000/t, which was marginally lower than the market price of CS$ 7500/t.

However, the contract became a matter of great debate in the Annual General Meeting of Aeris, conducted on 30th November 2023, with Ms. Elara Thorne raising doubts regarding the intent of the Board while deciding the price. The MD and CEO of Aeris justified the sale price, stating that the same was decided keeping in mind the weakened position of the company due to the ongoing Covid pandemic. However, the justification was not accepted by Ms. Thorne, and consequently, filed an application under § 241, Companies Act, 2010 against the company.

In her application, Ms. Thorne argued that the Company is acting contrary to the interests of the shareholders of the Company, by entering into commercial agreements with related parties at prices, which could not be considered as '*arms' length price*', which is otherwise a requirement under the law.

The Federal Company Law Tribunal (hereinafter 'FCLT') (the preliminary forum for adjudicating upon Company Law violations), after deciding on the jurisdictional matters of the case, accepted the case, and the final order is to be passed in November 2024. As the Chairperson of the FCLT, decide on the basis of the above factual matrix by applying relevant principles and provisions of the Companies Act, 2010. **(Marks 20)**

N.B.: ***The laws of Caldorn are pari materia to the laws of Republic of India***

Q.4. "*One of the fundamental tenets of the Company Law in our Country has been that of 'Principle of Commercial Wisdom' or the 'Business Judgement Rule' as enumerated by the Hon'ble Supreme Court in its celebrated Mafatlal v. Mafatlal Industries. The Hon'ble Court while elucidating upon this principle, rationalised that, as a commercial entity, a Company in generic course should have the freedom to operate in the best economic interest of itself and its Members. Therefore, if any actionable claim arises with regards to the same, the Company should be accordingly held responsible. However, it should also be pertinent to note that the abstract nature of the Company should also be appreciated and thus, the contours of 'Business Judgement Rule' should therefore be drawn with extreme caution, particularly in context of the liability*".

In accordance with the above context, kindly elucidate the position of Corporate Liability vis-à-vis Corporate Veil under the Companies, with the specific focus on the grounds for lifting Corporate Veil. Please use relevant legal provisions and case laws for substantiating your answer. **(Maximum Word Limit: 1000)** **(Marks 20)**

Q.5. OmniTech Solutions Pvt. Ltd. ("the Company") was incorporated in January 2020 by three promoters, Mr. Rajiv, Ms. Sneha, and Mr. Arjun. The promoters were instrumental in establishing the company and were actively involved in raising funds, acquiring properties, and entering into contracts even before the company was legally incorporated. In their pursuit to build the company, they attracted multiple investors and entered into agreements with suppliers for the initial setup of operations.

Before the official incorporation of OmniTech Solutions Pvt. Ltd., the promoters, Mr. Rajiv and Ms. Sneha, entered into a contract with Tech Equipments Ltd. ("the Supplier") for the purchase of machinery worth ₹5 crore. The contract specified that the promoters were acting on behalf of the proposed company, which was to be incorporated in the following months. However, no written clause was included to the effect that the company would ratify the contract post-incorporation.

Mr. Arjun, one of the promoters, spearheaded efforts to attract investors. He organized a series of presentations and meetings where he showcased the potential of OmniTech Solutions Pvt. Ltd. In these sessions, Mr. Arjun made several representations about the company's business prospects, financial projections, and partnerships. Specifically, he claimed that the company had secured exclusive contracts with several multinational clients, which would guarantee a significant stream of revenue once the company commenced operations. Based on these representations, a group of investors, led by Alpha Ventures, decided to invest ₹10 crore in OmniTech Solutions Pvt. Ltd. The

investment was made with the understanding that the company had a solid client base and was expected to achieve substantial profits within the first year of operations.

After the incorporation, OmniTech Solutions Pvt. Ltd. commenced operations but faced financial hurdles. The board of directors decided not to proceed with the purchase of the machinery due to cash flow issues, and as a result, they declined to ratify the contract with the Supplier.

On the other hand, it became evident that the supposed "exclusive contracts" with multinational clients were merely letters of intent, and no binding agreements had been finalized. The financial projections presented to investors were overly optimistic, and the company's actual performance fell significantly short of expectations. As a result, Alpha Ventures and other investors suffered financial losses and accused Mr. Arjun of misleading them with false information.

Tech Equipments Ltd., having already incurred expenses in anticipation of fulfilling the contract, initiated legal proceedings against Mr. Rajiv and Ms. Sneha, seeking enforcement of the agreement or compensation for the losses incurred. The Supplier argued that the promoters were personally liable since the contract was signed before the company's incorporation, and it was never formally ratified by the company after its establishment, accordingly they denied any liability.

Furthermore, Alpha Ventures having suffered financial losses, have now initiated legal proceedings, seeking to hold Mr. Arjun personally liable for misrepresentation and demanding compensation for the losses incurred. Mr. Arjun, in his defense, argued that the statements made during the investor presentations were based on good faith expectations and that there was no intention to deceive or mislead the investors.

Argue the above Factual Matrix on behalf of the Promoters, before the NCLT.

(Marks 20)

Q.6. Green Tech Innovations (P) Ltd. (hereinafter referred to as "the **Company/Green Tech**") is a technology-driven enterprise founded in 2013, specializing in renewable energy solutions, particularly solar power, energy storage, and advanced energy-efficient technologies. The Company formed a part of a larger conglomerate 'Eco-Nova Group Holdings Ltd.' (*hereinafter* **Eco-Nova Group/Primary Holding Company**), a company known for its sustainable business practices, and its expertise in the field of developing sustainable technical innovations. The Company was established by Mr. Arjun Mehta (Managing Director, EcoNova), Ms. Tara Verma, and Pioneer Industries Ltd. (a step-down subsidiary of Eco-Nova Group, *hereinafter* **Pioneer Industries**). During the initial phase of its operations, Green Tech had raised capital through the issuance of shares through private placement mechanism, as well as through issuance of debt instruments.

In 2014, GreenTech entered into an supply agreement with Sterling Supplies LLP (*hereinafter* **Sterling**), as a part streamlining the supply chain for its business operations. The firm specialised in manufacturing of photovoltaic cells, a key component in the manufacturing of the solar panels. Ms. Verma, was one of the designated partners of the LLP, and held a total contribution amount of 23% along with Mehta HUF (Ms. Verma: 10%' Mehta HUF: 13%).

In an attempt, to further strengthen its position within the market, Green Tech collaborated with Terra Ventures Enterprises Ltd. (*hereinafter* **Terra Ventures**), to form 'SustainHub International (P) Ltd.' (*hereinafter* '**SustainHub**') as joint venture

(with a 50% shareholding each). The incorporation of SustainHub, proved to be a masterstroke, with the Green Tech, now having the ability to develop the technical skills required within the green energy industries, in house. In 2019, SustainHub, acquired in 21% stake in Veritas Capital LLP (a venture capital fund, which specialises in funding Green Projects).

In 2012, Pioneer Industries had entered into two separate agreements (one Share Subcription Agreement (SSA Agreement) and one agreement for issuance of a combination of CCDs & OFCDs (Debentures Agreement)) with InnovaTech Solutions (P) Ltd. (*hereinafter* **InnovaTech**). In pursuant to the SSA agreement, InnovaTech acquired 16% shares in Eco-Nova Group. Furthermore, under the Debentures agreement, 50% of the convertible debentures (CCDs) were to be compulsorily converted into equity shares (according to the conversion ratio, the same amounted to 4% equity shares) post the maturity period or in an event of default, whereas, the remaining 50% were issued as OFCDs (also, amounting to 4% equity shares), which were convertible either at the option of InnovaTech or in the event of an default. The maturity period of the Debenture Agreement was for a period of 10 years.

However, in 2016 InnovaTech, had pledged its securities it held in Pioneer Industries, with Fortis Bank (a scheduled commercial bank, registered with RBI) (*hereinafter* **Fortis**), for raising a loan from Fortis. The terms of the pledge stated that, in an event of default, the ownership over the securities will automatically transfer to Fortis. In 2019, InnovaTech, defaulted on its payments to Fortis, and consequently, the pledge was exercised by Fortis.

After having operating in the market for more than a decade, Green Tech planned to expand its business further aims to raise ₹5000 crores through an Initial Public Offering (IPO) through fixed issue process, to fund a new solar energy plant, enhance its research and development (R&D) capabilities, and launch new energy-efficient products into the market.

The Company has submitted a Draft Red Herring Prospectus (DRHP) to the Securities and Exchange Board of India (SEBI) for approval. The relevant details of the Offer Document filed by the Company with SEBI is annexed herewith as ***'Annexure -I'***. SEBI, did not raise any objections at the time of the filing of DRHP. The issue process was a tremendous success, with the classes of shares for QIBs being oversubscribed by 30 times, and classes of shares for Non-Institutional Investor being oversubscribed by 45 times.

However, SEBI later found out, Fortis Bank and Veritas Capital had participated in the issue process in the QIB category, and had been allotted 5 lakh shares & 3 lakh shares respectively. In opinion of SEBI, this reduced the minimum public shareholding below the requisite threshold. Accordingly issued a show cause notice.

Draft a response to the aforementioned show-cause notice on behalf of Green Tech.

(Marks 20)

Annexure – I

Relevant Details of Draft Red Herring Prospectus filed by Green Tech

(1). Offer Details:

Total Issue Size: ₹5000 Crores
Issue Price: ₹ 1000/-
Face Value of Issued Shares: ₹ 10/-
Total no. of Shares to be Issued to Public: 1 crore shares (forming 30% of the Post-Issue Share Capital)
Shares to be Issued in Lieu of Promoter's Contribution: 30 Lakh shares
Shares to be Issued to Public Shareholders: 70 Lakh Shares
(i) Shares to be issued to the category of Qualified Institutional Buyers: 35 lakh shares (50%)
(ii) Shares to be issued to the category of Non-Institutional Investors: 10.5 lakh shares (15%)
(iii) Shares to be issued to the category of Retail Investors: 24.5 lakh shares (35%)

(2). Details of Promoters & Minimum Promoter's Contribution

Mr. Arjun Mehta & Pioneer Industries Ltd., are named as Promoters of Green Tech (P) Ltd. The promoters have declared a minimum promoters' contribution of ₹350 crores, constituting 70% of the total issue size.

(3). Details of Shareholding of Green Tech (Pre-Issue):

(A) *Promoter & Promoter Group of Green Tech (Pre-Issue) (Total: 67%)*

- Terra Ventures Enterprises Ltd., holding 25% of the equity share capital in Green Tech.
- Mrs. Anjali Mehta (spouse), Mr. Ravi Mehta (brother), and Ms. Neha Mehta (daughter) (holding 5% each).
- The Mehta Family HUF (where Mr. Mehta and his immediate relatives hold a 35% stake) owns a 12% stake in Green Tech.
- Evergreen Synergies Ltd., is the holding company of Green Pioneer Industries (P) Ltd., holds 15%.

(B) *Shares being held by other Shareholders (including Qualified Institutional Investors) (33%)*

- Fortuna Ventures LLP (a Category I AIF): 5%
- SmartInvest Asset Management (P) Ltd.: 8%
- Ms. George Friedman (HNI - Individual) – 5%
- Loyola Group of Industries: 15%

(4). Details of Shareholding of Green Tech (Post-Issue):

(A) *Promoter & Promoter Group of Green Tech (Post-Issue) (Total: 72%) (inclusive of the Minimum Promoter's Contribution)*

- Green Pioneer Industries (P) Ltd. – 20%
- Mr. Arjun Mehta: 10%
- Terra Ventures Enterprises Ltd.: 10%
- Mrs. Anjali Mehta (spouse), Mr. Ravi Mehta (brother), and Ms. Neha Mehta (daughter) (holding 3% each).
- The Mehta Family HUF (where Mr. Mehta and his immediate relatives hold a 35% stake) owns a 10% stake in Green Tech.
- Evergreen Synergies Ltd., is the holding company of Pioneer Industries Ltd., holds 13%.