

6 MAY 2024

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination May – 2024

Semester: UG VI Semester

Subject: Company Law II

Time: Three Hours

Marks: 100

Instructions :

- i. Each question carries equal marks.
- ii. The Students are required to attempt only five out of the six questions
- iii. Any specific requirements provided within the questions are to be adhered while answering the same.
- iv. QUESTION NOS. 1 & 3 ARE MANDATORY TO ATTEMPT.

Q.1). *Braveria Inc Ltd. (Braveria), is a company founded Mr. Naruto Uzumaki in the year 2008 within the Republic of Konoha, with its headquarters situated in Coruscant. The company was intended as a social networking and micro-blogging site, which allowed the users to express their views in a precise fashion, along with the option of sharing geotagged photographs. The MoA of the Company suggested that it had an authorised share capital of Konohan \$ 100 billion. Given the enterprising nature of Mr. Uzumaki, the Company was a huge success and it had crossed the market capitalization of Konohan \$ 10 billion by the year 2010.*

In the year 2011, the Company decided to go public and thus commenced its IPO process. Post the conclusion of the IPO, the company was valued at Konohan \$ 30 billion. In September, 2016 the Company went for a second round of public issue (hereinafter referred to a 'FPO') and consequently raised Konohan\$ 45 billion more. In furtherance of the FPO offer, Mandalorian Technologies Pvt. Ltd (hereinafter 'MTPL') participated in the FPO process as a non-institutional shareholder in the acquired 6.5% shareholding. Additionally, in November 2017, a separate Debenture deed was signed between Braveria and MTPL, wherein, MTPL was convertible debentures (amounting to 3% equity shares of Braveria upon maturity) with a maturity period of 5 years.

Nakatomi & Sons Ltd. (Nakatomi Ltd.), is a multi-national family-owned conglomerate with its business spanning across 165+ countries across the globe in Alderaan. The Group has business presence in almost all the industries; however, its principal business includes mining, manufacturing, power, FMCG, telecommunications and automobiles. All the businesses of Nakatomi are conducted through several of its subsidiaries and wholly-owned subsidiaries.

Dr. Hiroto Nakatomi, the patriarch of the Nakatomi Family and the current Managing Director of Nakatomi Ltd. is a not only a person of ambition but is also a visionary. He is a highly acclaimed industrialist, with a MS degree in mechanical engineering and a Doctoral degree in the field of sustainable technologies. He has remained dedicated to the cause of the environment protection and advancement of green technologies.



With an intent of advancing the integration of green technology within the automobile sector, Nakatomi Ltd. floated the Green Apeel Technology pvt. ltd. in 2018 (hereinafter 'Green Tech pvt. Ltd./Green Tech'). The Object Clause of the MoA, suggested that "the Company was established with a primary motive to advance the cause of green technology, whereas, it was also mentioned that the Company would further/its business into the arena of technology as a whole, which may not be directly related to green technology". Nakatomi Ltd. is the majority shareholder in Green Tech holding 60% shares, with the remaining shares being held by Dutchman Sons Ltd. (hereinafter DSL) [20%] and Catalonia Hydro Electrical Industries Ltd. (hereinafter 'CHEL') [20%]. Prior to the floating of the Green Tech, Nakatomi in 2014 had entered into a share purchase agreement with DSL, whereby it was entitled to shareholding of 5% along with the right to appoint 4 out of 11 Directors, as well as the Chairman of the Board.

In July 2015, Nakatomi Ltd. [56.23%] entered into a Multi-Party Joint Venture Agreement (hereinafter Agreement) with Mordor International Group (Elves Land) LLC [a subsidiary of Mordor International Group Holding LLC, which was a Company incorporated in United States] (hereinafter MIG) [17.27%], Truman Technology Inc. Ltd. (hereinafter TIL) [10.77%], Azure Hydrotech Ltd. (Azure) [8%] and Birla AT&T Communications Ltd. (hereinafter BACL) [7.73%]. The agreement led to the establishment of the Mandalorian Technologies Pvt. Ltd (MTPL). DSL holds majority shareholding in TIL, which in turns holds 24% shares in Azure and 10% shares in CHEL along with appointment of 4 out of 9 directors on the board, including the Managing Director.

In May 2019, Nakatomi Ltd. and DSL entered into the following two agreements: a) Share Subscription Agreement, wherein, DSL issued 5,00,000 shares (amounting to 10% of DSL's Shareholding) to Nakatomi Ltd. Furthermore, the agreement also granted Nakatomi Ltd. with the right to appoint 2 of directors to the Board of DSL.

In July 2021, Dr. Nakatomi, sought to invest Konohan \$ 800 million in Braveria to acquire 2% shareholding in the Company. In the negotiation plans that were drawn on behalf of the parties, the 'clauses pertaining to affirmative veto and the change in control' became a matter of significant concern, and despite the best efforts of Dr. Nakatomi, the deal fell through. The unsuccessful negotiations were a huge jolt for Dr. Nakatomi, as he felt that Mr. Uzumaki was being pretentious and was grossly over-valuing his Company's fortunes and prospective growth.

In December, 2022, Green Tech approached the shareholders of Braveria with an offer and made a cumulative offer of Konohan \$ 90 billion, (which was double the current market price of the Company's shares). By, April 2023, 92% shareholders of Braveriu had accepted Green Tech's offer. Thereafter, Green Tech, in accordance with the established legal procedures under the relevant provisions of the Companies Act, 2013, sent a notice to the remaining shareholders. Mr. Naruto Uzumaki, the Managing Director of the Braveria as having a promoter shareholding of (with 3.8%) was completely blindsided by the notice sent by Braveria. He felt that the conduct of Green Tech was rather reproachful and was in response to the failed negotiations with Dr. Nakatomi a year earlier.

After due consultations with his lawyers, Mr. Uzumaki has approached the National Corporations Tribunal (NCT) challenging the notice of Dr. Nakatomi, claiming that, the

notice is invalid under Companies as the current actions of Dr. Nakatomi is necessarily a takeover bid and should not be covered within the provisions of Companies Act.

Being the Chairperson of NCT, pass a reasoned order in accordance with the above factual matrix. Also give reasons to substantiate your answers. (Marks 20)

* **The Laws and Judicial Structure of Konoha are *pari materia* to the Laws and Judicial Structure of the Republic of India**

Q.2). Provide a brief discussion regarding the legal position Women Directors under Companies Act and other relevant legislations. Additionally, provide a brief opinionated discussion regarding the legal relevance of such provisions in India. (Marks 20)

Q.3). *M/s Gringotts Financial Services (India) Ltd. (hereinafter 'GIL') was incorporated in 2014 under the Indian Companies Act 2013 with its registered office at Madras as a wholly owned subsidiary of Gringotts Incorporated Plc. (hereinafter 'Gringotts'). In March 2016, Gringotts entered into an agreement with Weasley Magical Wheezes Plc. (hereinafter 'Weasley') to invest in GIL. Thereafter in September 2016, Gringotts and Weasley merged together to form M/s Gringotts-Weasley (India) Holding Ltd. (hereinafter the 'Holding Company'), which was duly approved by the NCLT vide its order dated 26th November 2016. However, both Gringotts and Weasley have survived the merger and continue to exist as separate entities.*

Through this merger, the entire share capital of GIL, previously held by Gringotts and Weasley was transferred to the Holding Company, post which the Holding Company held 99.95 per cent of the issued and paid-up capital of GIL and 0.05% shares, was held by Mr. Arthur Flick, the managing director of GIL. After the aforementioned amalgamation, GIL has carried out two separate rights issue (in July, 2017 and March, 2018) to its Indian employees and their relatives, which had resulted in dilution of the shareholding of the Holding Company. The current resident shareholding (as on July, 2019) (i.e., shares held by Indian citizens) stands at 40%, of which Mr. Arthur Flick's group owns 28.5% shares. The remaining 60% shares are being held by Gringotts (through its wholly owned subsidiary 'Crookshanks Ltd. ') and Weasley [both of them holding 30% each].

Though GIL was at one time wholly owned by Gringotts and later by the Holding Company with majority foreign control, the affairs have always been managed by an entirely Indian Management with Mr. Flick as its Chief Executive Officer as well as Managing Director with effect from the year . 2014. The Holding Company which was formed in 2016 had only one representative on the Board of Directors of GIL. He was Mr. Timothy Anderson, who resided in England and hardly ever attended the Board Meetings. The holding company reposed great confidence in the Indian management.

The Foreign Exchange Management (Non-Debt Instrument) Rules, came into force on in July, 2019 (hereinafter NDI Rules). Rule 6, NDI Rules prohibited non-residents, non-citizens, banking and non-banking companies not incorporated under any Indian law or in which the non-resident interest was more than 49 per cent, from carrying on any activity in India of a trading, commercial or Industrial nature except with the permission of the Reserve Bank of India. The existing entities, with foreign shareholding of more than 49%, were given a six-month period, to seek the necessary permissions. Since the Holding Company was a non-resident and its interest in GIL exceeded 49% GIL had to apply for the permission of the

Reserve Bank for continuing to hold its shares in GIL, the application for which was made September, 2019.

By its order dated November 11 2019, the Reserve Bank condoned the delay and allowed the application and imposed conditions on GIL that it must bring down the non-resident interest from 60% to 49% within one year from the date of the Order. On receipt of the intimation of the order, a response was sent by GIL, thereby confirming the acceptance of the various conditions under which permission was granted to GIL to continue its business. On February 11, 2020 the term of Mr. Filch's appointment as the Managing Director of GIL came to an end but in the BoD's meeting dated March 20th 2020 his appointment was renewed for a further period of 5 years.

Further, on May 20th and 21st, 2020 a meeting took place between the foreign and the Indian shareholders of GIL. However, the meeting ended in a stalemate as the Holding Company wanted a substantial part of the share capital held by it in excess of 40 per cent to be transferred to Madura Coats an Indian company in which the Holding Company had substantial interest as an Indian shareholder. Whereas, Mr. Filch insisted that the existing Indian shareholders of GIL alone had the right under its Articles of Association to take up the shares which the Holding Company was no longer in a position to hold because of the directives issued by the Reserve Bank pursuant to the NDI Rules. In the meantime, GIL received a reminder from RBI seeking the submission of its proposal in that behalf without any further delay and that failure to comply with the directive regarding dilution of foreign equity. It was also mandated that the same is to be achieved latest by September 15, 2020

All the directors were present in the meeting with Mr. Filch as the Chairman. Mr. C. Doraiswamy, solicitor-partner of 70i King and Partridge was one of the directors present at the meeting. He had no interest in the proposal of reducing the non-resident interest in GIL, which was the primary agenda of the meeting. However, the meeting resolved that the issued capital of GIL be increased by a new issue of 16,000 equity shares of Rs. 100 each to be offered as rights shares to the existing shareholders in proportion to the shares held by them. The offer was to be made by a notice specifying the number of shares which each shareholder was entitled to and in case the offer was not accepted within 16 days from the date on which it was made it was to be deemed to have been declined by the concerned shareholder.

In pursuance to the aforesaid resolution a letter of offer dated August 14, 2020 was prepared. The envelope containing Mr. Filch's explanatory letter (without the copy of the letter of the Reserve Bank dated May 31st 2020) and the letter of offer dated April 14 were received by the Holding Company on September 2, 2020 in an envelope bearing the Indian postal mark of August 24, 2020. The letter of offer which was sent to Mr. Manoharan (one of the Indian Shareholders) also bore the date of 24th August. The next meeting of the Board was due to be held on September 2, 2020. The Holding Company was thus denied an opportunity to exercise its option whether or not to accept the offer of right shares, assuming that any such option was open to it.

The meeting of the Board of Directors was held on September 2, 2020 and the whole of the new issue consisting of 16,000 rights share was allotted to the Indian shareholders including members of the Manoharan group. Out of these the Mr. Filch and his group were allotted 11,734 shares. Upon the issuances of the new shares, the total shareholding of the Indian shareholders increased to 58.7%, whereas the position of the foreign interest was reduced to



41.3%. After marking the allotment of shares a letter was sent to the Reserve Bank by GIL reporting compliance with the requirements of the NDI Rules.

Aggrieved by the actions of GIL, the Holding Company filed an application with the NCLT, alleging violations of Section 241 on account of the abuse of the fiduciary position by Mr. Filch and the exclusive allotment of the shares to Indian shareholders, without the consent of the Holding Company. They further argued that, the actions of Mr. Filch were deliberate and had malafide intent, which restricted the Holding Company from exercising its legitimate rights.

The Chairperson of NCLT, while noting the infirmities in the meeting convened on September 2, 2020 directed GIL to compensate the Holding Company for the notional loss suffered by it. However, the Holding Company being aggrieved by the aforesaid Order filed an appeal to the Appellate Tribunal. Additionally, GIL filed its cross-objections w.r.t the appeal. After the preliminary hearing the NCLAT has passed a preliminary Order dated January 13th, 2023 thereby suspending the resolution concerning the new allotment of the Shares, with the date of the final hearing and passing of judgment set to be in May, 2020. This has effectively meant that currently the foreign shareholders hold 60% shareholding, whereas, the Indian Shareholders hold 40%. Furthermore, the Appellate Tribunal has formed the following issues to be determined:

- i. Whether the Board Resolution dated September 2, 2020 amounts to Oppression and Mismanagement u/s 241, Companies Act, 2013? (Marks 5)
- ii. Given the aforementioned circumstances, would this qualify to a legitimate circumstance for the Tribunal to Order for minority buy-out of the foreign shareholding by the Indian shareholders, to uphold the principles of justice? (Marks 15)

Q.4). Discuss the Legal position concerning the Power of Tribunal vis-à-vis Alteration of the Scheme of Compromise under Companies Act, 2013 r/w NCLT Rules, 2016, with the help of decided case laws. (Marks 20)

Q.5) Provide a Brief Discussion on: (Marks 10*2)

(i) The notion of 'Good Faith' Obligation as a Duty of the Director as enumerated by the Hon'ble Supreme Court in its recent decisions.

(ii) Discuss the problem of 'Duality of Nominee Directors' existing within the Companies Act, 2013. Furthermore, suggest the approach of the Courts in resolving such duality.

Q.6) Given the above context, please discuss the prevalent legal position concerning the liability of Independent Directors, with due considerations being accorded to the legal provisions and case laws. (Marks 20)