NATIONAL LAW UNIVERSITY, JODHPUR

8 MAY 2023

End Term Examination May – 2023
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 five out six questions*.**
iii. **Any specific requirements provided within the questions are to be adhered while answering the same.**
iv. **Question Nos. 1, 3 & 4 are mandatory to attempt.**

Q.1). *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 7, 2020

All the directors were present in the meeting with Mr. Filch as the Chairman. Mr. C. Doraiswamy, solicitor-partner of 701 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. Both the Letters of Offer mentioned that the decision concerning the specific distribution of the new shares which would be issued, would be decided in the Board meeting that was scheduled to be held on September 2, 2020.

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 on January 15, 2021, 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 vide its Order dated February 24, 2022, 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 has 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 current the foreign shareholders hold 60% shareholding, whereas, the Indian Shareholders hold 40%.

Furthermore, the Appellate Tribunal has formed the following issues to be determined for the final hearing:

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.2). "*The topic concerning liability of the directors have always been a debatable discussion within the Indian corporate regime. However, it assumes an entirely different context, when considered from the perspective of Independent directors. While, Executive Directors are considered as agents of the companies and hence are held liable under the principle of* ***'officer in default'****, the case of Independent Directors is often marred with curious peculiarities. On expected lines, the debate concerning the liability of independent directors is a case of polarised views. Although, the Companies Act has attempted to address the issue, a settled position of law concerning the same, is still a long way out*".

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

Q.3). *Dwarka Lal & Sons Limited (hereinafter known as "Company"), having characteristics of a Private Limited Company, established by Mr. Manik Dwarkadas in 1858 is engaged in the business of ironworks, steelworks, cotton mills and hydroelectric power plants that proved crucial to India's industrial development. Mr. Manik Dwarkadas also established a Trust in the name of "Dwarka Lal & Sons" for carrying on philanthropist activities like maintaining and supporting schools, educational institutions, hospitals, provide relief in distress caused by the elements of nature such as famine, pestilence, fire, tempest, flood, earthquake or any other calamity, help advancement of learning in all its branches especially research work in medical and industrial problems, providing scholarship to students for pursuing higher education etc.*

The "Dwarka Lal & Sons" (hereinafter known as the Trust) holds 27% shareholding in the Company. The Trust with other Dwarka Family trusts collectively holds 40% shareholding in the company. Mr. Ryan Dwarkadas (Successor of Mr. Manik Dwarkadas) was appointed as Chairman of the group companies for a period of 24 years from 1990-2014 and thereafter retired from the official position.

The Company through its selection committee has approached Mr. Rustom Sodawala, who was also a member of Board of Directors of the Company to hold the position of Executive Chairman of the Company for four consecutive years (2014-2018). Mr. Rustom Sodawala accepted the offer and he was appointed as a Chairperson of the company on the basis of the assurance that he would be given a free hand in discharging his duties towards the company.

In 2015, Mr. Rustom Sodawala, through a Board meeting in the "Other items" and without giving any prior notice, was removed from the Directorship of the company on the ground that "the Board of Directors has lost Confidence in his leadership" and Mr. Ryan Dwarkadas was appointed as Interim Chairperson of the company. It was alleged that Mr. Rustom Sodawala has leaked the confidential information of the Company and its group Companies to outside third parties and also to media and he openly came out against the Directors of the Company and that of its Group Companies and the Trusts, which does not augur well for smooth functioning of the company.

It was also alleged that Mr. Rustom Sodawala also passed material information about commercial transactions entered between the Company with its group company to Income Tax Authorities and made allegations of violating tax compliances against the directors of the concerned companies. A group of shareholders, represented by Mr. Rustom Sodawala (hereinafter referred to as "the Petitioners") challenged the removal of Mr. Rustom Sodawala from the position of Chairman of the company alleging that affairs of the Company are being conducted in an oppressive manner prejudicial to the interest of the Petitioners and public and filed a petition under section 241 and 242 of Companies Act, 2013 against other Directors of the Company and Trustees of the Trusts (hereinafter refereed to as "the Respondents").

*The Petitioner collectively holds 18% equity in the shareholding of the Company. The Petitioners challenged the removal of Mr. Rustom Sodawala and certain clauses of the Articles of Association before National Company Law Tribunal, New Delhi [**The Relevant Clauses of the AoA are attached herewith as 'Annexure — A'**]. The Petitioners also putforth their contention that the Article of Association of the company has become device*

for superintendence and control of the company by Mr. Ryan Dwarkadas who is acting as a Super Board by means of nominee directors appointed on behalf of the Trust. The Directors of the Company have not exercised their fiduciary responsibilities for and on behalf of the shareholders; the Directors have become mere puppets in the hands of Mr. Ryan Dwarkadas.

The Petitioners contended the clauses of AOA on the ground among others that the powers contained in AOA of the Company is being exercised in malafide manner prejudicial to the interests of shareholders of the Company. It was also alleged that Mr. Rustom Sodawala was removed from the position of Executive Chairman of the company in the Board Meeting without putting him to prior notice, despite his tenure has not expired without giving any substantial reason apart from giving a purported reason that "the Board of Directors lost the Confidence in his leadership" and the decision is primarily based on a legal opinion, but no such legal opinion was placed before the Board at the time of his removal.

It was also alleged that no selection committee was constituted for his removal from the position of Chairman of the Company. The Petitioner further made allegations of breach of Insider Trading Regulations by the Trustees and Dwarka Group Companies. Issues were also raised about various projects of the Company including that Veno Car project which was a dream project of Mr. Ryan Dwarkadas, had become a liability upon the company, as it had been continuously proven as a loss incurring business move and when the said factual matrix been raised or brought to the notice of the Board of Directors by Mr. Rustom Sodawala with recommendation that it should be shut down in the interest of the company, however, due to personal interest of Mr. Ryan Dwarkadas in the project, the decision to shut down the said project has not yet been taken which is prejudicial to the interests of the shareholders of the company.

At last the Petitioners allege that from the abovementioned facts it can be fairly stated that the affairs of the company have been conducted in a manner prejudicial to the interest of the Petitioners, the shareholders and company and also stands in violation of the provisions of the Companies Act, 2013 and principles of Corporate Governance.

After considering the facts of the case and relevant provisions of law, the Hon'ble National Company Law Tribunal had dismissed the Petition. The Petitioners however have appealed the matter to the National Company Law Appellate Tribunal. After hearing the appeal petition, the NCLAT had framed the following issues for further assessment:

i. Whether the act of the Respondents amounts to oppression or mismanagement under Section 241 and 242 or any other provisions of Companies Act, 2013 ? (Marks 15)

ii. Whether the Petitioners are eligible to seek remedy against the Articles of Association of the company on the ground of such Clauses being oppressive, unfair and prejudiced? (Marks 5)

As the Chairperson of the NCLAT, decide on the above issues, and provide reasoned order based on the above factual matrix as well as the decided cases. (***The applicable law will be that of Republic of India***).

Q.4). *Stark Enterprises Ltd. (**Stark**), is a company founded Mr. Tony Stark in the year 2008 within the Republic of Metropolis, with its headquarters situated in Gotham. 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 Metropolitan $ 100 billion. Given the enterprising nature of Mr. Stark, the Company was a huge success and it had crossed the market capitalization of Metropolitan $ 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 Metropolitan $ 30 billion. In September, 2016 the Company went for a second round of public issue (hereinafter referred to a '**FPO**') and consequently raised Metropolitan$ 45 billion more. In furtherance of the FPO offer, Caymen Technologies Pvt. Ltd (hereinafter **'CTPL'**) participated in the FPO process as an non-institutional shareholder in the acquired 6.5% shareholding. Additionally, in November 2017, a separate Debenture deed was signed between Stark and CTPL, wherein, CTPL was issued convertible debentures (amounting to 3% equity shares of Stark upon maturity) with a maturity period of 5 years.*

Banner & Sons Ltd. (Banner 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 Banner are conducted through several of its subsidiaries and wholly-owned subsidiaries. Dr. Bruce Banner, the patriarch of the Banner Family and the current Managing Director of Banner 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, Banner Ltd. floated the Green Earth 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". Banner 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, Banner 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, Banner 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, Banner 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 Banner Ltd. Furthermore, the agreement also granted Banner Ltd. with the right to appoint 2 of directors to the Board of DSL.

In July 2021, Dr. Banner, sought to invest Metropolitan$ 800 million in Stark 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. Banner, the deal fell through. The unsuccessful negotiations were a huge jolt for Dr. Banner, as he felt that Mr. Stark was being pretentious and was grossly over-valuing his Company's fortunes and prospective growth.

In December, 2022, Green Tech approached the shareholders of Stark with an offer and made a cumulative offer of Metropolitan $ 90 billion, (which was double the current market price of the Company's shares). By, April 2023, 92% shareholders of Stark 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. Tony Stark, the Managing Director of the Stark as having a promoter shareholding of (with 3.8%) was completely blindsided by the notice sent by Stark. He felt that the conduct of Green Tech was rather reproachful and was in response to the failed negotiations with Dr. Banner a year earlier.

After due consultations with his lawyers, Mr. Stark has approached the National Corporations Tribunal (NCT) challenging the notice of Dr. Banner, claiming that, the notice is invalid under Companies as the current actions of Dr. Banner 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 Metropolis are *pari materia* to the Laws and Judicial Structure of the Republic of India**

Q.5) 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.6) Based upon the context of the above phrase, 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)

Annexure — A

RELEVANT CLAUSES OF ARTICLES OF ASSOCIATION W.R.T QUESTION NO. 3

i. **Article 12(1)** - All decisions of the Board of Directors of the company would need affirmative consent of majority of the Trusts Nominated Directors.

ii. **Article 86** - That so long as the Trust collectively hold at least 40 % of the paid up capital of the company, no quorum shall be constituted in the General meeting of the company unless one authorized representative jointly nominated by Dwarka Lal & Sons present in such meeting. The Trusts shall also have the right to nominate 1/3rd of the prevailing members of Board of Directors of the Company.

iii. **Article 104** - The trustees of the Trust are entitled to nominate three Trust Nominated Directors.

iv. **Article 118** - It has been provided that so long as Trusts collectively hold at least 40% of the paid-up equity, the selection committee shall be constituted to recommend a person as Chairman of the Board of the company and such person would be appointed as Chairman by the Board. The process that is followed for the selection shall be repeated when removal of such chairman is contemplated by the Board.

v. **Article 121**- It provides that unless affirmative vote of majority of directors appointed by Dwarka Trusts voted in favor of such person, he cannot become Chairman of the company.

vi. **Article 121A** – The decisions of the Company to be brought to the Board of Directors of the Company.