

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

**Course: Corporate Law-II
Semester-VII (Batch: 2013-18)**

Mid Semester Test: August-2016

Date: 9th August, 2016

Duration: 2 hours

Max. Marks: 30

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Bare Act is not allowed.**

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|---|---------------------------------------|
| <p>Q.1 Explain the followings (Max: 80 words)</p> <p>(a) Rule in Foss V Harbottle</p> <p>(b) Eligibility Criteria to file a petition for prevention of Oppression and Mismanagement</p> | <p>Marks
(2x3=
06)</p> |
| <p>Q.2 Answer the following questions:</p> <p>(a) Can a share holder of the Holding company file a petition for prevention of Oppression and Mismanagement against the subsidiary company?</p> <p>(b) 'A petition for prevention of Oppression and Mismanagement is arbitrable in India'. Do you agree with this? Explain.</p> <p>(c) 'Winding up is the discretion of the Company Court not the right of the petitioner'. Do you agree with this? Explain.</p> <p>(d) Some creditors of a company filed a petition for prevention of Oppression and Mismanagement due to a contractual dispute. Can an order for performance/ specific performance of contract be passed? Explain.</p> | <p>(4x3=
12)</p> |
| <p>Q.3 A company M/s ZADSIL & Co. was incorporated in 1965 as per the provisions of the Companies Act, 1956 and subsequently it became a public listed company. In 2008, M/s ZADSIL & Co. has acquired equity shares of another company M/s Mid Co Ltd. In 2010, the relationship between M/s ZADSIL & Co. and M/s Mid Co Ltd. was holding and subsidiary. Mr. Anmesh is one of the shareholder in both the companies. He holds 11% of equity shares in M/s ZADSIL & Co. and 12% in M/s Mid Co Ltd. The Board of Director (BOD) of M/s ZADSIL & Co have resolved in the BOD meeting to transfer 3% of equity shares belonging to Mr. Anmesh (in M/s ZADSIL & Co) to Mr. Chadha, another share holder. The said 3% shares were transferred and registered in the name of Mr.Chadha. Mr.Anmesh objected to this. The BOD did not respond to the objection of Mr. Anmesh. Mr. Anmesh wants to file a petition for the prevention of oppression and mismanagement.</p> <p>Meanwhile the SEBI has issued show cause notice to M/s ZADSIL & Co, for violation of SEBI Takeover Code and also for violation of the Insider Trading Regulation. Slowly</p> | <p>(5+5+
2=12)</p> |

the shareholders have lost faith in the company. Maximum of them sold the shares. The company had accumulated huge amount of losses. The State Bank of India, the Axis Bank and the IDBI banks are the secured creditors of the company. Gradually the company became financially sick. In the said circumstances, on 2/07/2013, all the above creditors have sent notice to the company M/s ZADSIL & Co. demanding the repayment of debt. On 22/07/2013, the M/s ZADSIL & Co. objected to the amount claimed by the creditors. The objection was that, when the loan was sanctioned by the creditors, it was with simple interest. But, the claim amount was with compound interest. The secured creditors have the clarification that, the compound interest was in accordance with the existing policy of RBI. The company did not respond anything else for the next two years. There are some other petitions filed against the company for dishonour of cheques. In January, 2016 the abovementioned secured creditors, filed a petition for winding up. During the pendency of the winding up petition, the creditors filed a petition in DRT and invoked the provisions of the SARFAESI for recovery of debt.

Read the above fact and answer the following questions.

- (a) Being the corporate advocate for Mr. Anmesh and the company (only in the matter of prevention of oppression and mismanagement) advance your argument for Mr. Anmesh and defend the company.
- (b) Being the corporate advocate, frame issues for the creditors to file a petition for winding up. Being the judge, decide the petition.
- (c) During the pendency of the winding up petition, can the creditors approach the DRT?
