
PAPER 4 : CORPORATE LAWS AND SECRETARIAL PRACTICE
NOVEMBER 1998

Question Nos. 1, 2 and 3 are compulsory.
Answer any four of the rest.

Question 1

Answer any **three** of the following:

- (a) XYZ Co.Ltd. called its Annual General Meeting on 7th September, 1997. The notice of A.G.M. was posted on 16th August, 1997. One member holding 20 shares wishes to challenge the resolutions passed at the A.G.M. on the ground that the notice was not valid. Advice him. **(6 Marks)**
- (b) State the provisions relating to professional immunity to legal advisers and bankers under the Companies Act, 1956. **(6 Marks)**
- (c) Pine Company Ltd. is a new company. Its commercial operation started on 1.1.1998 and its audited operative results are not yet available. State the guidelines (for the protection of investors) of Securities and Exchange Board of India (SEBI) WHICH would be applicable to Pine Company Ltd. in respect of its first issue of shares.
What would be your answer, if Pine Company Ltd. is set up Long Jones Co.Ltd. and Short Henry Co.Ltd. incorporated in 1987 and 1988 respectively with a five year “track record of consistent profitability” ? **(6 Marks)**
- (d) In the Companies Act, 1956 and in FERA, 1973, there are several provisions which start with the words “without prejudice” and “notwithstanding” . Explain (in not more than 10 lines each) the nature and significance thereof, applying the principles of statutory interpretation. **(6 Marks)**

Question 2

Answer any **two** of the following:

- (a) Dr. Vijay is a practicing Gynaecologist. He purchased (after having placed an order in January, 1998) an Unauthorized Scanner from TCL, a company registered in India, on the basis of their advertisement that the equipment is of super-class quality and that the purchaser would be trained for two weeks in the USA, within two months of delivery of equipment. TCL delivered the goods in April, 1998 (i.e. three months late), after ten weeks of delivery, the equipment proved to be defective and developed serious trouble. Further no training in USA was offered to Dr.Vijay, despite repeated requests calling upon the supplier to fulfil the promise.
What is the remedy available to Dr.Vijay and what course of action should be taken under the law? What are his chances of succeeding in litigation? Examine, keeping in mind the provisions of the MRTP Act, 1969. **(8 Marks)**
- (b)
 - i. Ionic Co.Ltd. decided to raise the foreign equity as part of an expansion programme. State the eligibility criteria for increase in foreign equity. **(4 Marks)**
 - ii. Kirit purchased a ceiling fan thereby participating in a prize scheme, announced by the manufacturer of the fan, whereby Maruti Cars, Bajaj scooters and tape recorders were offered as “bonanza prizes” and in addition every purchaser was assured a small gift. Kirit did not win any bonanza prize, but got a shaving kit as gift. Kirit learnt that just when the scheme had been announced, the price of the fan had been increased.
Kirit approaches you for advice. State, with reasons, the provisions of the law under which the action of the fan manufacturer can be brought to book under the MRTP Act, 1969. **(4 Marks)**
- (c) Jagan is a resident of India. He desires to make gift of Rs.5 lakhs to his sister Ms.Gagan (who is a person resident outside India), on the occasion of her marriage. He approaches you for advice in the matter. You

are requested to analyse the provisions applicable and tender advice, in the light of the law laid down in FERA, 1973. **(8 Marks)**

Question 2

Answer any **two** of the following:

- (a) Santosh Iron and Steel Co.Ltd is under lock-out since 1993. It is registered with the BIFR on 25.6.1996. A scheme of revival was prepared, but the implementation totally failed. From the Balance Sheet as at 31.3.91, the company's accumulated loss is Rs.10 crores and may be much higher now. The estimated net value of the company is Rs.3 crores as per the Balance Sheet. There is no prospect of revival. Under the circumstances, what is the course of action open to BIFR to protect the assets of the company from further erosion? **(7 Marks)**
- (b) Enumerate briefly the main purposes for the creation of the Board for Industrial and Financial Reconstruction (BIFR), and its role by virtue of the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). **(7 Marks)**
- (c) Under the SICA, the machinery for appeals is self-contained, with an Appellate Authority created under the Act exclusively for adjudicating upon the orders of BIFR. State (i) who can appeal, and (ii) on what grounds will an appeal lie. **(7 Marks)**

Question 2

- (a) Madhurima Ltd. is a public limited company. It has a paid up share capital of Rs.10 crores. It is engaged in software development for export. It was promoted by Mr. Sharat, who is an NRI (a foreign resident of Indian origin), and his friend Mr.Mohan, who is an Indian citizen resident in India. Currently, Mr.Mohan is heading the company in India as the President. However, Mr.Sharat is the main business strategy formulator, and also actively renders several services outside India to the company, and also advises the Board of Directors of the company. But he is stationed in the USA and visits India for hardly ten days a year. The company desires to know from you, whether they can appoint Mr.Sharat, as the "Managing Director", to comply with Section 269 of the Companies Act, 1956, and pay him a salary in foreign exchange. They also desire that you advise them as to whether the said appointment can be made in terms of FERA, 1973. You are requested to give a reasoned answer, duly supported by analysis of the legal provisions applicable to the issue in question. **(7 Marks)**
- (b) What are the provisions of the Companies Act, 1956, relating to entering into contracts by agents of a company, in which the company is the undisclosed principal? **(6 Marks)**

Question 3

- (a) ABC Co.Ltd. was amalgamated with, and merged in, XYZ Co. Ltd. Some workers of ABC Co.Ltd. refuse to join as workers of XYZ Co.Ltd. resists the claim on the ground that their services are transferred to XYZ Co.Ltd. by the order of the amalgamation and merger and, therefore, the workers must join service of XYZ Co.Ltd and cannot claim any compensation. Who will succeed– the workers of ABC Co.Ltd. or the XYZ Co.Ltd.? Give reasons. **(7 Marks)**
- (b) Pouny Ltd. is a Public company which was being mismanage due to which certain parties applied to the CLB for relief. The Central Government, pursuant to a recommendation by the CLB, by its order under section 408, appointed Mr.Pureesh (an IAS Officer) as a director of the company for a period of four years. The said Mr.Pureesh is a member of a joint Hindu family in which Mr.Paresh who is a director of the company is also a member. Mr.Ramesh another director on the company's board, challenges the action of the central government nominee should forthwith vacate his office and refund the remuneration received till date. Examine the provisions of law applicable to the facts of the case, and give a well-deliberated answer. **(6 Marks)**

Question 4

- (a)
- i. In Parween Woodcraft Co.Ltd. Mr.James was named in the list of first directors. He, however, died before he could assume office. How can the problem regarding the appointment of a director be solved in this case? **(6 Marks)**
 - ii. In case of appointment of directors of a company, all the directors were not voted on individually, but were appointed by one resolution and no shareholder objected to it. Discuss the position under the provisions of the Companies Act. **(7 Marks)**
- (b) State briefly the law enshrined in the Companies Act, 1956, in regard to the filing of the “declaration of solvency”. **(7 Marks)**

Question 5

- (a) Gulmohar Ltd., a company registered under Indian Law owns a factory in Calcutta, wherein it manufactures jute products. By a notification of the State Government, issued during October, 1996, due to a strike and lock-out, it was declared a relief undertaking. After four months, in February, 1997, the lock-out was lifted. However, during the said period the company’s directors defaulted in payment of Provident fund (PF) and other ancillary dues. During the month of December, 1997, the company and its directors under the Employees PF and Miscellaneous Provisions Act, 1952, for default and delay in payment of PF dues.
- Immediately the directors of the company applied to the High Court for relief under Section 633 of the Companies Act, 1956, praying for relief from liability under the PF law. The petition is now pending before a single judge. The company and its directors desire to know from you, as to the tenability of their claim for relief at the High Court, as to whether they would be excused and exonerated by the High Court, in respect of the contraventions committed under the PF law.
- Briefly discuss the law on the subject and state whether the petition filed by the directors would be admitted or not under the Companies Act. **(7 Marks)**
- (b) Explain the meaning and significance of “public examination” by the court under the Companies Act, 1956. **(6 Marks)**

Question 6

- (a)
- i. What is the liability of an auditor for failure to point out in his report that dividend is paid out of sale of the company’s real estate? **(6 Marks)**
 - ii. Can an auditor be disqualified for indebtedness in the following cases:
 - iii. where he is recovering his fees on a progressive basis even though the job is not complete;
 - iv. where the auditor’s firm has purchased goods from the auditee company and not paid for them for over six months?
- (b) What do you understand by “fraudulent preference” of creditors under Company Law? **(7 Marks)**

Question 7

- (a)
- i. What is the procedure to be followed, when a Board Meeting is adjourned for want of quorum? **(6 Marks)**
 - ii. What do you understand by the passing of resolutions by circulation?
- (b) On scrutiny of the sole selling agency agreement of HIJ Company Ltd., with X, the Central Government finds that the agreement. Is prejudicial to the interest of the company and cancels it. X consults you as to the advisability of challenging the order of the Central Government. Please advise X as to the chances of his successfully challenging the order of the Central Government. **(7 Marks)**