
PAPER 4: CORPORATE LAWS AND SECRETARIAL PRACTICE
MAY 1998

Questions 1, 2 and 3 are compulsory.

Answer any four of the rest.

Question 1

Answer any **three** of the following:

- a. DJA Company Limited held its Annual General Meeting for the financial year ended 31st March, 1997, on 30th September, 1997. The meeting was adjourned without placing the Balance Sheet of the company as at 31st March, 1997 before the meeting. The Balance Sheet as at 31st March, 1997 was placed at the adjourned. Annual General Meeting held on 31st March, 1998 and the same was filed with the Registrar of Companies on 20th April, 1998.
Examine with reference to the relevant provisions of the Companies Act, 1956, whether placing of the Balance Sheet at the adjourned Annual General Meeting and filing of the same with the Registrar of Companies by the company on 20th April, 1998 are in order. **(6 Marks)**
- b. J, an existing rotational director of MRN Company Limited whose term expired at the Company's Annual General Meeting held on 30th September, 1997, was reappointed at the same meeting. J accepted the reappointment and resumed the office without filing his consent with the concerned Registrar of Companies on his reappointment. A group of members of the company object to J's continuation as director, since J did not file his consent with the Registrar within the stipulated period as required under the Companies Act, 1956. Examining the provisions of the Act, decide:
 - i. Whether the member's contention shall be tenable and whether J has violated the provisions of the Companies Act, 1956 in this regard?
 - ii. What would be your answer in case J is a person named as director of the company in the Company's Articles of Association registered with the Registrar of Companies. **(6 Marks)**
- c. Explain the procedure as prescribed under the Securities and Exchange Board of India Act, 1992 for determining the penalty for insider trading and the factors to be taken into account in this regard. **(6 Marks)**
- d. In what way can the following be of help in interpreting a statute:
 - i. The "Preamble" to an Act.
 - ii. The "Marginal Notes" appended to a section of the Act? **(6 Marks)**

Question 2

Answer any **Two** of the following:

- a. P & C Limited, a company manufacturing writing and painting accessories conducted a painting competition offering gifts to the winners. A consumer association complains to the MRTP Commission that the company has increased the price of its products and thereby recovered the cost of the gifts. Moreover, the holding of the competition itself promotes the sale of the company's products. Thereby, the company has indulged in Unfair Trade Practices, which are prejudicial to public interest and a "cease and Desist" order should be passed. The company has claimed that the prices of the products have increased due to general increase in the prices of raw materials.
Referring to the provisions of the MRTP Act, 1969 decide; whether the Association's contention is tenable and whether a "Cease and Desist" order can be passed against P & C Limited, by the MRTP Commission? **(8 Marks)**
- b.
 - i. The MRTP Commission instituted enquiry proceedings against the firm "Fly by night operators" for indulging in several unfair trade practices in the matter of collection of deposits from public by offering them residential properties. During the course of enquiry, the firm gave an undertaking not to collect any fresh deposits from the public. It was, however, noticed that the said firm did collect fresh deposits

from the public even after giving the undertaking an aggrieved depositor approaches you for advice on the following.

- ii. Whether MRTP Commission has power to initiate contempt proceedings against the firm?
- iii. Whether there is any time limit within which the action may be taken in respect of the above? Referring to the provisions of the MRTP Act, 1969 advise your client on the above.
- iv. Mr. Diligent, a foreign national executed a deed of gift in favour of Mr. Faithful, a person resident in India which has the effect of divesting the title and interest in the property in India in favour of the resident Indian.

Examine whether collection of rents by the resident Indian would come within the purview of the Foreign Exchange Regulation Act, 1973, as if the donee was collecting rents on behalf of the foreign donor. **(8Marks)**

- c. DJA Company Ltd., wants to set up a joint venture and a subsidiary company on 100% shareholding in U.K. The company seeks your advice on the procedure to be adopted and the documents to be filed with the concerned authority as required under the Foreign Exchange Regulation, 1973. Advise. **(8 Marks)**

Question 3

Answer any **two** of the following:

- a. An industrial company has not provided for depreciation in its accounts and as such the company's net worth is positive. State with reasons whether it is required to take into account the arrears of depreciation not provided in the accounts for the purpose of determining whether the company has become a sick industrial company under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985. **(7Marks)**
- b. When is an industrial company considered a potentially sick industrial company? Explain with reference to the provisions of the Sick Industrial Companies (Special Provision) Act, 1985, the actions that must be taken by such companies and by their Board of Directors. **(7 Marks)**
- c. With the reference to the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 briefly explain the functions of an "Operating Agency". **(7 Marks)**

Question 4

- (a) DCB Limited entered into an agreement with its shareholders, according to which the latter have to buy all the products manufactured by the company such as flavours, food, colour preparations, aromatic compounds, synthetic essential oils, etc., in such assortment of minimum quantity as agreed upon by mutual consent and to maintain in stock a representative range of all the said products and to display them prominently in their showrooms.
Examine with reference to the provisions of the MRTP Act, 1969 whether the above said stipulation in the agreement can be questioned by any of the wholesalers under the Act, **(7 Marks)**
- (b) Briefly examine the powers vested in the Securities and Exchange Board of India to regulate and prevent undesirable transactions in securities under the Securities Contracts (Regulation) Act, 1956, by virtue of the SEBI Act, 1992. **(6 Marks)**

Question 5

- (a) Examine the validity of the following with reference to the relevant provisions of the Companies Act, 1956;
 - i. The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitions have not given reasons for the resolutions proposed to be passed at the meeting.

-
- ii. The Board of Directors refuse to convene the extraordinary general meeting on the ground that the requisitions have been signed by the joint-holder named first in the register in respect of the share held by the joint-holder.
 - iii. Holding of extra-general meeting at a place other than the village in which the registered office of the company is situated, on the ground that it is more convenient for the members to attend the meeting at a place other than the village in which the registered office of the company is situated.
 - iv. Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present at the meeting. **(7 Marks)**
- (b) Explain the provisions of the Companies Act, 1956 relating to the payment of dividend in respect of the following: **(6 Marks)**
- i. Utilization of past profits retained in the Profit and Loss Account of the company, in view of inadequacy of profits for the current year for proposed payment of dividend.
 - ii. Dividend on shares transferred in respect of which transfer deed have been executed and lodged with the company but transfer has not been registered by the company.

Question 6

- (a) What are the disclosure requirements as provided in Schedule VI of the Companies Act, 1956 with regard to "Investments" in the Balance Sheet of a company? Explain **(7 Marks)**
- (b) With reference to the provisions of the Companies Act, 1956 examine the validity of the following:
- i. Appointment of Mr. Balak, a minor as a director of MRN (Private) Limited.
 - ii. The Chairman of the meeting of a public limited company adjourns the general meeting of a company against the wishes of the majority of members present in person or by proxy.
 - iii. Mr. Smart was appointed as the Managing Director of a public limited company for a period of 5 years effective from 1.4.1993. It is noticed that he performed certain acts on behalf of the company in which he was appointed, after the expiry of his term. Some of the aggrieved parties have questioned the validity of the Managing Director's acts. **(6 Marks)**

Question 7

- (a) XYZ Co., Limited has its subsidiary company PRM Ltd., which is formed to carry out some of the objectives of XYZ Co., Limited. XYZ Ltd., suspends one of its several businesses, by passing a resolution at the company's extraordinary general meeting with effect from 1st January, 1997. The business so suspended continues to be suspended until March, 1997. On 1st April, 1997, a group of shareholders of XYZ Ltd., file a petition in the court for winding of the company on the ground of suspension of business by the company.

Referring to the provisions of the Companies Act, 1956 decide;

- (i) Whether the Shareholder's contention shall be tenable?
 - (ii) What would be your answer in case XYZ Ltd., suspends all its businesses?
 - (iii) Can shareholders of PRM Ltd., file a petition in the court for winding up of their company (PRM Ltd.,) on the ground that the holding company viz., XYZ Ltd., has suspended its entire business, though PRM Ltd., has not suspended its business? **(7 Marks)**
- (b) The paid up share capital of AJD Limited is Rs.10 crores consisting of 70 lakhs Equity Shares of Rs.10 each, fully paid up and 30 lakhs Preference Shares of Rs.10 each, fully paid up Nationalized Banks, L.I.C and I.D.B.I hold among themselves 30 lakhs Equity Shares and 25 lakhs Preference Shares.
- With reference to the provisions of the Companies Act, 1956, examine whether AJD Limited is a Government Company. Explain the manner in which you would proceed in the matter of appointment of auditors for the said company. **(6 Marks)**

Question 8

- (a) The paid up share capital and free reserves of XYZ Co., Ltd., a public company is Rs.100 crores as on 1st April, 1998. The shareholders of the company at their general meeting held on 4th April, 1998, by a resolution authorized the Board of Directors of the company to borrow money "exceeding the paid up

share capital and free reserves of the company, to the extent required by the Board of Directors". The Board of Directors as a result borrowed money to an extent of Rs.130 crores, including Rs.20 crores as short-term loan and Rs.25 crores as temporary loan for financing the construction of a building of the company.

Referring to the provisions of the Companies Act, 1956 examine the validity of the following:

- i. The Board's exercising the powers for borrowing money to an extent of Rs.130 crores?
 - ii. What would be your answer in case the company's paid up share capital and free reserves increased to Rs.150 crores and the Board of Directors borrow money to an extent of Rs.140 crores which neither include any short term loan nor temporary loan for financing of the construction of a building of the company? **(7 Marks)**
- (b) DEP Limited having subscribed share capital of Rs.5 crores and free reserves of Rs.3 crores has not so far given any loan or guarantee to body corporates. Examine with reference to the provisions of the Companies Act, 1956 the legal requirements to be complied with by the company in respect of the following;
- (i) Furnishing guarantee to ABC Housing Finance Company Ltd., for loans granted by it (ABC Housing Finance Company) to the employees of DEP Limited.
 - (ii) Granting loan of Rs.10 lakhs to MN Limited in which 30% of the Equity Shares is held by one of the directors of DEP Limited. **(6 Marks)**

Question 9

- (a)
- i. Is it possible for a retiring Director to continue in his office beyond on the date of Annual General Meeting which had to be adjourned due to disturbances at the meeting? Explain.
 - ii. Draft the resolutions of the Board of Directors of AJD Co., Limited for the following decisions;

The Board of Directors of the company at their meeting held on 4th April, 1998 decide by a resolution that Mr.A be appointed as the Managing Director of the company for a period of 5 years effective from 1st June, 1998, and paid remuneration by way of salary, commission and perquisites in accordance with Part II of Schedule XII of the Companies Act, 1956. The Board further directs the Secretary of the company to file necessary returns with the Registrars of Companies and to take all steps necessary in this regard. **(7 Marks)**
- (b) Examine the extent to which the legal representative of a deceased director against whom misfeasance proceedings were initiated by the liquidator of the company, under the Companies Act, 1956, can be held liable. **(6 Marks)**