

PAPER – 4 : CORPORATE AND ALLIED LAWS

SECTION – A

Answer all questions.

Question 1

- (a) *Parkash Carriers Limited appointed Mr. Raman as its auditor in the Annual General Meeting held on 30th September, 2009. Initially, he accepted the appointment. But he resigned from his office on 31st October, 2009 for personal reasons. The Board of Directors seeks your advice for filling up the vacancy by appointment of Mr. Albert as auditor. Advise.*

Also suggest the procedure to be adopted in case Mr. Albert is proposed to be removed from his office before the expiry of his term. (5 Marks)

- (b) *A Public Company has been declaring dividend at the rate of 20% on equity shares during the last 5 years. The Company has not made adequate profits during the year ended 31st March, 2009, but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the Company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2008-2009. Would your answer be different if the company utilized only the profits made in the previous years and retained in the profit and loss account for the purpose of payment of dividend at the rate of 20% for the year 2008-2009?* (5 Marks)

Answer

- (a) Under section 224(6) of the Companies Act, 1956, the Board may fill any casual vacancy in the office of an auditor. However, where such vacancy is caused by resignation of an auditor, the vacancy shall be filled by the company in general meeting. Thus, in the present case, the company may convene an Extra Ordinary General Meeting to appoint Mr. Albert as its auditor consequent upon the resignation by Mr. Raman.

In term of section 224(7) of the Act, 1956, Mr. Albert may be removed from office before the expiry of his term only by the Company in General Meeting after obtaining previous approval of the Central Government.

- (b) As per Rule 2 of the Companies (Declaration of Dividend out of Reserves) Rules, 1975 dividend may be declared by a company for any year out of the accumulated profits earned by it previous years and transferred by it to the reserves subject to certain conditions. One of the conditions is that the rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 5 years immediately preceding that year or 10% of its paid-up capital which ever is less. As the proposed dividend exceeds 10%, it is necessary to seek the approval of the Central Government as required under section 205A(3) and only after obtaining the approval of the Central Government, the company may declare dividend at rate of 20% for year 2008-09, even if the other conditions relating to the amount that can be drawn from the reserves and

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minimum balance in the reserve are fulfilled. However, the credit balance, if any, carried in the profit and loss account will be available for declaration of dividend without any restriction. Hence in such a case dividend may be declared at the rate of 20% for 2008-09, without approval of the Central Government.

Question 2

- (a) *Explain the action that can be taken by the Central Government, when a complaint is received from some shareholders of a Public Company that a person has been appointed as the Managing Director of the Company without seeking the approval of the Central Government, when such approval is required. Also examine the validity of the acts of the Managing Director, if the complaint is found to be true.* (5 Marks)
- (b) *Mr. Kamlesh, son of Managing Director of a Public Company, is proposed to be appointed as Chief Executive of the Company on a monthly remuneration of Rs.75,000. State the provisions of the Companies Act, 1956 which are required to be complied with by the company in this regard?*

Will it make any difference if Mr. Kamlesh is appointed as Whole-Time Director on the same remuneration? (5 Marks)

Answer

(a) Improper appointment of Managing Director:

On receipt of the complaint, if the Central Government is prima facie, of the opinion that the Managing Director has been appointed without approval of the Central Government, when in fact such approval was necessary, the Central Government may refer the matter to the Company Law Board (Tribunal) for decision [Section 269(7)]. The Company Law Board will issue show-cause notice to the Company as well as the concerned Managing Director [Section 269(8)]. The Company Law Board will hear the case, and if it comes to a conclusion that the appointment is in contravention of requirements of Schedule XIII, it will make an order to that effect [Section 269(9)]. On such order, the appointment of the concerned Managing Director shall be deemed to have come to an end. The person so appointed shall in addition to being liable to pay a fine of Rs 1 lakh, refund to the company the entire remuneration received by him between the date of his appointment and the passing of such an order [Section 269(10)]. But all acts done by him prior to the declaration of invalidity will be valid, if they are otherwise valid [Section 269(12)].

(b) Holding office or place of profit by Director's relative:

Under Section 314(1B) of the Companies Act, 1956, in case relative of a Director holds office or place of profit under the Company on a monthly remuneration of Rs.50,000 or more, the Company is required to obtain prior consent of the company by special resolution and approval of Central Government. In the present case, the Company is accordingly required to pass a special resolution and obtain approval of the Central Government.

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In case Mr. Kamlesh is appointed as Whole Time Director in the Company, Section 314 will not be attracted in view of sub-section (3) thereof, as he will be drawing remuneration in his capacity as a Director. He will be governed by the provisions of Section 269 read with Schedule XIII of the Act, according to which approval of Central Government is not required as the proposed remuneration of Rs.75,000. per month is within the ceiling provide in Part II of Schedule XIII provided the conditions prescribed in Part I of the Schedule have been complied with by the Company and the appointee.

Question 3

- (a) *Proximo Limited has 9 Directors out of whom 3 Directors have gone abroad. The Chairman had an urgent matter to be approved by the Board of Directors which could not be postponed till the next Board meeting. The Company, therefore, circulated the resolution for approval of the Directors. 4 out of 6 Directors in India approved the resolution. The Company claimed that the resolution was passed. Examine with reference to the provisions of Section 289 of the Companies Act, 1956 the validity of the resolution.* (5 Marks)
- (b) *Premier Machineries Limited having a paid-up share capital of Rs.90 lakhs proposes to enter into a contract with the following parties for supply of components with effect from 1st January, 2008 for a period of 3 years:*
- (a) *XYZ Metal Forging Private Limited in which Mr. John, a Director of Premier Machineries Limited, is a Director and member.*
- (b) *ABC Casting Limited in which Mr. Philips, a Director of Premier Machineries Limited, holds 30% of the paid-up share capital.*

The capital of Premier Machineries Limited was increased to Rs.1.50 crores on 1st January, 2009 by issue of further shares.

Briefly discuss the legal requirements to be complied with under the Companies Act, 1956 to give effect to the above proposals taking into account the increase in the paid-up share capital as on 1st January, 2009. (5 Marks)

Answer

(a) Passing of Resolution by Circulation

According to Section 289 of the Companies Act, 1956, a resolution by circulation shall not be deemed to have been passed, unless the resolution has been circulated in a draft, together with the necessary papers, if any to all the directors then in India (not less in number than the quorum fixed for a meeting of the Board) as the case may be, and all other directors at their usual addresses in India, and has been approved by such of the directors as are then in India or by majority of such of them, as are entitled to vote on the resolution. In this case, the resolution has been approved by 4 directors out of 6 in India; the majority of total number of directors who were entitled to vote was 5 as against 4 directors who approved the resolution. Thus both the alternate conditions were not fulfilled. The resolution cannot be deemed to have been passed.

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- (b) Under section 297 of the Companies Act, 1956 as Mr. John, a director of Premier Machineries Ltd. is interested in XYZ metal Forging Private Ltd. as a director and a member of the Company, a resolution in the meeting of the Board of Directors is required to be passed before entering into a contract with XYZ Metal Forging Private Ltd. If due to urgency it is not possible to pass a Board resolution before entering into the contract, the requisite consent of the Board shall be obtained within three months of the date on which the contract was entered into under Section 299, Mr. John must disclose his interest to the Board and not participate in the said meeting/deliberations.

Since the paid up capital of the Company is Rs.90 lakhs, approval of the Central Government is not necessary. In this case, the paid up capital was increased to Rs.1.50 crore subsequent to the date of entering the contract. No approval of the Central Government will be required as on the material date of entering into the contract, the paid up capital was less than Rs 1 crore.

(ii) Section 297 does not cover cases of Public Limited Companies, hence aforesaid approvals will not be necessary. In both the cases the interested directors must make disclosure of interest as required under section 299 and also comply with section 300. Entries are also required to be made in the Register of Contract under section 301.

Question 4

- (a) *The report submitted by the inspector appointed under Section 235/237 of the Companies Act, 1956 to investigate the affairs of a Company revealed that substantial funds of the Company have been misappropriated by the Managing Director of the Company. The Central Government is of the opinion that effective action may not be taken the company for recovery of the funds misappropriated by the Managing Director. Examine with reference to the provisions of the Companies Act, 1956 the action that can be taken by the Central Government for recovery of damages or funds misappropriated by the Managing Director.* (5 Marks)
- (b) *Answer the following explaining the relevant provisions of the Companies Act, 1956:*
- (1) *Whether the Companies being amalgamated must be Companies registered under the Companies Act, 1956.*
 - (2) *Whether the Companies seeking sanction of the court for a scheme of amalgamation must have specific power to amalgamate in the object clause of their Memorandum of Association.* (5 Marks)

Answer

(a) Recovery of damages

Section 244 of the Companies Act, 1956 provides that where from the inspectors' report it appears that a fraud or misappropriation of property has been committed and the Company is therefore, entitled to bring an action for damages for misconduct or for the recovery of any property, which has been misapplied or wrongfully retained, the Central Government may itself in public interest bring proceedings for that purpose in the name

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of the Company. Thus, the Central Government is empowered to bring civil proceedings in the name of the Company in any case where it appears that such proceedings ought in the public interest to be brought, even if the company does not take such action. In such a proceeding, the inspector's report shall be admissible as evidence of the opinion of the inspection in relation to any matter contained in the report (Section 246). The Central Government should indemnify the company against any cost or expenses incurred by it or in connection with any proceedings brought by it. [Section 244(2)].

(b) Amalgamation

A scheme of compromise or arrangement may provide for amalgamation of companies under section 394 of the Companies Act, 1956. Section 394(4)(b) defines the 'transferor' and 'transferee' companies. While the 'transferee' company does not include any company other than a company within the meaning of the Companies Act, 1956, the transferor company includes any body corporate, whether a company within the meaning of the Companies Act or not. 'Body Corporate' includes a company incorporated outside India [(section 2(7))]. Hence transferor company may be a company incorporated outside India, but transferee company must be a company incorporated under the Companies Act, 1956.

Usually the Memorandum of Association of a company contains in its object clause the power to amalgamate. But, in a number of cases it has been held that it is not necessary to have in the memorandum of association a specific power to amalgamate with another company. The provisions of Section 391/394 of the Companies Act, 1956 indicate the scope of the statutory power for amalgamating a company with another company despite the absence of any specific enabling provision in their memoranda. (*Aimco Pesticides Ltd, Feedback Reach Consultancy Pvt Ltd., Sir Matturdas Vissaiji Foundation in re*). Hence even companies not having specific power to amalgamate in their Memoranda can seek sanction of the Court for a scheme of amalgamation.

Question 5

- (a) *A group of members of XYZ Limited has filed a petition before the Company Law Board alleging various acts of oppression and mismanagement by the majority shareholders of the Company. The Petitioner group holds 12% of the issued share capital of the Company. During the pendency of the petition, some of the petitioner group holding about 5% of the issued share capital of the Company wish to disassociate themselves from the petition and they along with the other majority shareholders have submitted before the Company Law Board that the petition may be dismissed on the ground of non-maintainability. Examine their contention having regard to the provisions of the Companies Act, 1956*
- (5 Marks)

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- (b) *M/s Raman Ltd. was wound up by the Court. The official liquidator invited claims from its creditors which stood as under:*

<i>Income tax dues</i>	<i>Rs.11 lakhs</i>
<i>Sales tax dues</i>	<i>Rs. 5 lakhs</i>
<i>Dues of workers</i>	<i>Rs.25 lakhs</i>
<i>Unsecured loans payable to directors</i>	<i>Rs.25 lakhs</i>
<i>Trade creditors who supplied raw material</i>	<i>Rs.15 lakhs</i>
<i>Secured creditor being the bankers of the company</i>	<i>Rs.75 lakhs</i>
	<i>Rs. 156 lakhs</i>

Official Liquidator could realize only Rs.80 lakhs by sale of assets and realizations made from the company's debtors, which is not sufficient to pay to all the creditors. Please decide the order of priority for payment to creditors explaining the relevant provisions of the Companies Act, 1956. (5 Marks)

Answer

- (a) The argument of the majority share holders that the petition may be dismissed on the ground of non-maintability is not correct. The proceedings shall continue irrespective of withdrawal of consent by some petitioners. It has been held by the Supreme Court in *Rajmundry Electric Corporation vs. V. Nageswar Rao*, AIR (1956) SC 213 that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition. Thus, the validity of the petition must be judged on the facts as they were at the time of presentation. Neither the right of the applicants to proceed with the petition nor the jurisdiction of Company Law Board to dispose it of on its merits can be affected by events happening subsequent to the presentation of the petition.
- (b) Under section 529A of the Companies Act, 1956, (i) workmen's dues, and (ii) debts due to secured creditor shall be paid in priority of all debts, and shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

Income tax dues and sales tax dues are preferential creditors under section 530 of the Act, and subject to the provisions of section 529A, the same may be paid in priority to the claims of unsecured creditors.

In the present case, the available funds are only to the extent of Rs.80 lakhs which will be distributed amongst the secured creditor and workmen in proportion to their dues, as follows:

Workmen

(1/4th of Rs.80 lakhs)

: Rs.20 lakhs

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Secured creditor

(3/4th of Rs.80 lakhs)

: Rs. 60 lakhs

As such, the dues of preferential creditors (namely, Income tax and sales tax dues) and unsecured creditors (unsecured loan and trade debtors) cannot be paid any amount.

Question 6

- (a) *Examine whether the following Companies can be considered as 'Foreign Companies' under the Companies Act, 1956:*
- (i) *A company which is incorporated outside India employs agents in India but has no place of Business in India.*
 - (ii) *A company incorporated outside India having shareholders who are all Indian citizens.*
 - (iii) *A company incorporated in India but all the shares are held by foreigners. (5 Marks)*
- (b) *A Producer Company has received applications from Mr.Ramanathan, a Director of the Company, and Mr. Prem, a member of the Company, for grant of loan of Rs.2,00,000 and Rs.25,000 respectively. Discuss the relevant provision of the Companies Act, 1956 as to how the applications for grant of loan will be disposed of by the Company. (5 Marks)*

Answer

- (a) (i) As definition given Section 591(1) of the Companies Act,1956 a Company incorporated outside India and having not established a place of business in India, is not deemed to be a Foreign Company. Thus establishing a place of business is an essential ingredient in the definition. In the given case, the company has not established a place of business India. It will not be deemed to be a foreign company:
- (ii) A company incorporated outside India, will not be deemed to be a Foreign Company even though all the shareholders are Indian citizens, unless it has a place of business in India.
- (iii) A company incorporated in India but having all foreign shareholders will be deemed to be an India Company as it is not incorporated outside India though it has a place of business in India.
- (b) Under Section 581ZK of the Companies Act, 1956, the Board of the Producer Company may, subject to the provision in the Articles of Association, provide financial assistance by way of loan and advances against such security as may be specified in its Articles of Association to any member repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances. In the instant case, member has applied for loan of Rs.25,000. The period is not specified in the question. The Company may grant the member a loan of Rs.25,000 against such security and at such rate of interest as may be specified in the Articles. However, in the case of a director, loan of Rs.2 lakh can be granted only after its approval by the members in general meeting.

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Question 7

- (a) *A company proposes to appoint a Sole Selling Agent for its products. State the cases in which such appointment requires approval of Central Government. Draft a Board Resolution to appoint a sole selling agent in a case where such appointment does not require approval of Central Government.* (5 Marks)
- (b) *The Board of Directors of LM Limited propose to donate Rs.3,00,000 to a school established exclusively for the benefit of children of employees and also donate Rs.50,000 to a political party during the Financial year ending 31st March, 2010. The average net profits determined in accordance with the provisions of Sections 349 and 350 of Companies Act, 1956 during the three immediately preceding financial years is Rs.40,00,000. Examine with reference to the provisions of the Companies Act, 1956 whether the proposed donations are within the power of the Board of Directors of company.* (5 Marks)

Answer

(a) Appointment of sole selling agents

Under Section 294AA of the companies Act, 1956, in following cases, appointment of sole selling agents will require approval of Central Government:

- (i) An individual, firm or body corporate who has a substantial interest in the company cannot be appointed as a sole selling agent without prior approval of Central Government [Section 294 AA(2)]. Substantial interest means shares of Rs.5 lakhs or 5% paid up capital of the company, whichever is less. The shareholding may be singly or together with relatives (in the case proposal Sole Selling Agent being an individual), partners and their relatives (in the case of a firm) directors and relatives of directors (in the case of a body corporate (Explanation (b) to Section 294AA).
- (ii) Any company having paid up share capital of Rs.50 lakhs or more cannot appoint sole selling agent with approval in general meeting by a special resolution and also approval of Central Government [Section 294AA(3)]. These restrictions apply to all Companies is both Private and Public Companies.

Board Resolution

Resolved that pursuant to the provisions of section 294 of the Companies Act, 1956, and subject to the approval of the Company at a general meeting by ordinary resolution, the Board approves the appointment of 'X' as the company's sole selling agent for the sale of in the territory of for a period of five years with effect from on the terms and conditions set out in the draft agreement produced to this meeting and initiated by the chairman for purposes of identification or with such modifications (not being less advantageous to the company) as may be mutually agreed by the Board and 'X'

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(b) Donations

As per section 293(1) (e) of the Companies Act, 1956, the Board of Directors of a Company must obtain approval of the shareholder by way of resolution passed in their meeting for contributing in any year, to charitable and other funds not directly relating to the business of the company or the welfare of to employees any amount exceeding Rs.50,000 or 5% of its average net profits of the last 3 financial years, which ever higher. In the given case, the school is established exclusively for the benefit of the children of the employees of the company and hence the restriction under section 293 (1) (e) is not applicable and the Board is empowered to make the proposed donation.

Donation to political parties: It is presumed that LM Ltd is not a Government Company. It has been in existence for more than 3 years. The proposed donation to a political party is only Rs.50,000 which is less than 5% of the average net profit for 3 immediately preceding financial years. Hence the Board of Directors is empowered to make a donation by passing a resolution at a Board meeting. The company is also required to make is proper disclosure in the profit and loss account. (Section 293 A).

SECTION – B

Question 8

An Unlisted Public Company, having a paid-up equity share capital of Rs.5 Crores consisting of 50,00,000 equity shares of Rs.10 each fully paid-up, proposes to reduce the denomination of equity shares to less than Rs.10 Per share and make an initial public offer of equity shares at a premium. Examine whether it is possible for the Company to issue shares at a denomination of less than Rs.10 and, if so, state the minimum issue price and other conditions to be fulfilled under the SEBI (Disclosure and Investor Protection) Guidelines, 2000. (6 Marks)

Answer

Denomination of shares for public issue

An eligible company shall be free to make a public or right issue of equity shares in any denomination determined by it by complying with section 13(4) of the Companies Act, 1956 and also SEBI Guidelines.

According to SEBI guidelines, in case of initial public offer by an unlisted company.

- (a) if the issue price is Rs.500 or more, the issuer company shall have a discretion to fix the face value below Rs.10 per share subject shall in no case be less than Re.1 per share and also it shall not be is decimal of a rupee.
- (b) If issue price is less than Rs.500 per share the face value shall be Re.10 per share.

Here the issue price has not been given in the question. It is possible for the company to issue shares having a face value of less than Rs.10 per share only if the issue price is Rs.500 or more (para 3.7.1)

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However, at any one time, shares shall be only of one denomination. Hence the denomination of existing shares can be altered by changing memorandum and articles by passing special resolution. The company is also required to adhere to the disclosure and accounting norms specified by the SEBI from time to time (para 3.7.3). The face value shall be disclosed in the advertisement offer documents and is application forms, in the same font size as that of issue price or price band[Para 3.7.1(ii)] .

Question 9

A Company incorporated in United Kingdom established a branch at Chennai. What is the residential status of the Chennai branch? The Chennai branch proposes the purchase some immovable property at Chennai for the purpose of its business. Is it a 'Capital Account Transaction' within the meaning of Section 2(e) of the Foreign Exchange Management Act, 1999? Are there any restrictions under the Foreign Exchange Management Act, 1999 in respect of such acquisition? (6 Marks)

Answer

According to section 2(v)(iii) of FEMA, 1999, person resident in India inter alia means an office, branch, or agency in India owned or controlled by a person resident outside India. The company incorporated in U.K is a person resident outside India [Section 2(v)(ii) read with section 2(w) of the FEMA, 1999] as it is not a body corporate registered or incorporate in India. As the Chennai branch is branch in India is owned and controlled by the U.K Company is resident outside India, the Chennai branch is resident is India under section 2(v) (iii) stated above.

Capital account transaction.

In the case of a resident in India, capital account transaction means a transaction which alters the assets or liabilities outside India. The Chennai branch (is resident in India) acquires immovable property at Chennai (is in India). Hence this acquisition is not a "capital account transition" within the meaning of Section 2(e) of FEMA. Section 6(3) empowers RBI to restrict or regulate the acquisition of immovable property in India by a person resident outside India. Hence there is no restriction in acquisition of immovable property in India by Chennai branch.

Question 10

Mr. Raj Behari retired as a Member of Competition Commission of India (CCI) on 31st October, 2008. He was offered the post of Chief Executive in M/s. LSD Ltd. which was earlier a party in the proceedings before CCI. Can he join the Company with effect from 1st November, 2009?

What will be the position if Mr. Raj Behari joins Oil & Natural Gas Commission Ltd., a Government Company with effect from 1st April, 2009? ONGC was also earlier a party in the proceedings before CCI. (6 Marks)

Answer

Under Section 12 of the Competition Act, 2002, a Member of CCI shall not, for a period of two years from the date on which he ceased to hold office, accept any employment in any

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enterprise, which has been a party to a proceeding before the Commission. However, these provisions will not apply to any employment in a Government Company or Government or local authority or any Corporation established under any Central or state Act. In view of the aforesaid, Mr. Raj Behari cannot join M/s LSD Ltd on 1-11-2009 as only one year has expired from the date of his retirement. However, there is no bar for him to join ONGC on 1-4-2009 even earlier than two years of his retirement as it is a Government Company.

Note: The period of one year was increased to two years by the Competition (Amendment) Act, 2007 w.e.f 12.10.2007.

Question 11

XLR Bank Limited is not managing its affairs properly. Employees as well as depositors of the bank have complained to the Central Government from time to time about such mismanagement and requested the Central Government to acquire the undertaking of the Banking Company. Explain the powers of the Central Government in this regard under the Banking Regulation Act, 1949. (6 Marks)

Answer

Under Section 36AE of the Banking Regulation Act, 1949, if the Central Government is of the opinion that a Banking company has failed to comply with the direction given by RBI relating to policy matters under section 21 and 35A and or the affairs of the Bank are being managed in a manner detrimental to the interest of depositors or that of the banking policy or for better provision of credit generally or of credit to any particular section of the community or in any particular area; it is necessary to the Government may after consultation with RBI, by notified order, acquire the undertaking of a Banking Company. In such a case, on the date specified in the notification, the undertaking of the Banking Company and its assets and liabilities shall stand transferred to and vest in Central Government. Before acquiring the undertaking, the Central Government shall give a reasonable opportunity of hearing to the Banking Company.

Question 12

Briefly discuss the Rule of 'ejusdem generis' as applied in the interpretation of statute. (6 Marks)

Answer

When particular words pertaining to a class or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. This rule which is known as Rule of *ejusdem generis* reflects an attempt 'to reconcile incompatibility between the specie and general words in view of the other rules of interpretation that all words in the statute are given effect if possible, that a statute is to be construed as a whole and that no words are presumed to be superfluous. For instance, where an Act permits keeping of dogs, cats, cows, buffaloes and other animals the expression 'Other animals' would not include animals like lions and tigers, but would mean, only domesticated animals like horses etc.

The rule applied when (i) the statute contains an enumeration of specific words: (ii) the subjects of enumeration constitute a class or category: (iii) that class or category is no

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exhausted by the enumeration; (iv) the general terms follow the enumeration; and (v) there is no indication of a different legislative intent. If the subjects of enumeration belong to a broad based genus as also to narrower genus, there is no principle that the general words should be confined to the narrower genus.

The rule is applied extensively in interpreting the various statutes. The rule of ejusdem generis has to be applied with care and caution. It is not an inviolable rule of law, but only permissible reference in the absence of an indication, to the contrary, and where the context and the object and mischief of the enactment do not require restricted meaning to be attached to word of general import, it becomes the duty of the Courts to give words their plain and ordinary meaning. The rule of ejusdem generis has no inverse application. General words preceding the enumeration of specific instances are not governed by this rule and their import cannot be limited by such words.