

PAPER – 4 : CORPORATE AND ALLIED LAWS

Answer *all* questions

SECTION – A

Question 1

- (a) *Mr. Sachin was appointed as an additional Director of Conservative Finance Ltd. w.e.f. 1st October, 2009, in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next annual general meeting of the company was due on 31st March, 2010, but the same was not held due to delay in the finalisation of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr. Sachin and his continuation as additional director beyond 31st March, 2010. Advise the company on the complaints made by the shareholders.* (5 marks)
- (b) *Mewar Instrumentations Limited is a subsidiary of a Government Company. The Comptroller and Auditor General of India appointed Sobman & Company to conduct a supplementary audit of Mewar Instrumentations Limited. Discuss, under the provisions of the Companies Act, 1956 whether the Comptroller and Auditor General's power to authorise such audit for the said subsidiary company is in order?* (5 marks)

Answer

- (a) **Appointment of director in a Casual vacancy:** Section 262 of the Companies Act, 1956 which deals with the filling of a casual vacancy provides that a director can be appointed only at a validly convened and constituted Board meeting. Hence the appointment of Mr. Sachin by passing a circular resolution is not valid and the shareholders who made a complaint in this regard are correct. The tenure of a director appointed against a casual vacancy will be upto the date to which the original director in whose place he is appointed would have held office. On the other hand, an additional director appointed by the Board will hold office only upto the date of next annual general meeting and he cannot continue in office beyond the last date of the annual general meeting i.e. 31st March, 2010 on the ground the annual general meeting could not be held. (*Krishna Prasad Pilani vs. Colaba Land Mills Co AIR, 1960, BOM, 312.*)
- (b) **Audit of Subsidiary Company:** In accordance with the provisions of the Companies Act, 1956, as contained in section 617, the term 'Government Company' includes a company which is a subsidiary of a Government Company. In view of the above provision, Mewar Instrumentations Limited comes within the purview of Government Company because it is a subsidiary of a Government Company.

Therefore, the power of the Comptroller and Auditor General of India to authorise Sobman & Company to conduct supplementary audit of Mewar Instrumentations Limited is perfectly within the provisions as contained in section 619 (3) (b) of the Companies Act, 1956.

Question 2

- (a) *Mr. Ramesh and his supporters hold more than 50% of the equity share capital of Progressive Realtors Ltd. Dissatisfied with the performance of the company, Mr. Ramesh sends a notice to the Board of Directors about his intention to inspect the account books of the company.*

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Explain the provisions of the Companies Act, 1956 regarding the persons who can inspect the books of account and the right of Mr. Ramesh in this matter. (5 marks)

- (b) *X & Co. Ltd. made a loss of Rs. 20 lakhs after providing for depreciation for the year ended 31st March, 2009 and as a result the company was not in a position to declare any dividend for the said year out of profits. However, the Board of Directors of the company announced the declaration of dividend of 15% on the equity shares payable out of free reserves. The paid up share capital of the company and its free reserves as on 31st March, 2009 are Rs. Two crores and Ten crores respectively. The average dividend declared by the Company in the last five years is 25%. Examine the validity of declaration of dividend. (5 marks)*

Answer

- (a) **Inspection of books of account – By Whom?** : In accordance with the provisions of the Companies Act, 1956, as contained in section 209A, the following persons can inspect the books of account of a company.

- (i) Directors of the company
- (ii) Registrar of Companies
- (iii) Such officer of Government as may be authorized by the Central Government in this behalf.
- (iv) An Officer of Securities Exchange Board of India has also power to carry out in respect of matters covered under section 55A dealing with listed companies.

Mr. Ramesh cannot exercise the power to carry out the inspection even though he and his supporters hold more than 50% of the equity share capital of the company. It is, however, possible for Mr. Ramesh and his group to come into the management by occupying the posts of directors by virtue of shareholdings and then inspect the books of account of the company.

- (b) **Powers relating to Declaration of Dividend:** In accordance with the provisions of the Companies Act, 1956 as contained in section 205(1), dividends may be declared by a company out of the current year profits arrived at after providing for depreciation or out of previous years profits after providing for depreciation or out of moneys provided by the Government. Further a company must transfer a prescribed percentage of its profits (not exceeding 10%) to its reserves before declaring dividends. It must be noted that the power to declare dividend vests with the Board of Directors. When dividends are declared out of free reserves, the company has to comply with the following conditions as prescribed in the Companies (Declaration of Dividend out of Reserves) Rules, 1975 framed by the Central Government:

- (a) The rate of dividend declared does not exceed the average of the rates at which dividend was declared by it in the 5 years immediately proceeding that year or 10% of the capital whichever is less.
- (b) The total amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves does not exceed an amount equal to 1/10th of the sum of its paid up capital and free reserves and the amount to be drawn must first be utilized to set off the losses incurred in the financial year before any dividend in respect of equity shares is declared.

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- (c) The balance of such reserves after drawl does not fall below 15% of its paid up share capital.

In view of the above, X & Co. Ltd. cannot declare 15% of dividend as proposed. However, it can declare 10% dividend provided the conditions stated in (b) & (c) above are fulfilled.

Question 3

- (a) *Ambitions Engineering Consultants Ltd., whose financial year ends on 31st March, has acquired Struggling Techies Ltd. making it a subsidiary company. The financial year of the subsidiary company ends on 30th June. The management of the holding company wants to change the financial year of the subsidiary company, if possible, so as to coincide with the financial year of the holding company. State the relevant provisions of the Companies Act, 1956 regarding the financial year and the maximum period upto which the accounts can be prepared in a Financial Year and the approvals, if any, required to be taken to accomplish this task* (5 marks)
- (b) *Ganesh Textiles Private Limited has discontinued its Business since 2006. Negligible assets are available with the company, but also some liabilities. The company has been regular in filing Annual Returns and Balance Sheets. The Director of the Company propose to apply to the Registrar of Companies for striking the name of the company on the ground that it is a defunct company.*

Advise, as to what steps can be taken to get the name of the company struck off under the provisions of the Companies Act, 1956. (5 marks)

Answer

- (a) **Financial Year of holding company and subsidiary company:** According to Section 210(4) of the Companies Act, 1956 the financial year of a company can be less or more than a calendar year, but it shall not exceed 15 months. However, the financial year can be extended upto 18 months if a special permission is granted by the Registrar of Companies. Further according to Section 213(1) the Central Government has the power to extend the financial year of either the holding company or subsidiary company so that the subsidiary's financial year may be with of the holding company. Thus Ambitious Engineering Consultants Ltd. can make an application to the Central Government or the Registrar of Companies according to the requirement. In case the extension of financial year beyond 15 months and upto 18 months, the application has to be made the Registrar of Companies. If the period exceeds 18 months, then application has to be made to the Central Government for approval. The company on its own can extend the financial year upto 15 months without obtaining any approval.
- (b) **Striking off defunct company:** In the given case Ganesh Textiles Private Ltd. is required to follow the established procedure to enable the Registrar to remove the name of the company under Section 560 of the Companies Act, 1956. For this purpose, an application accompanied with the following documents be submitted to the Registrar of Companies:

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1. An affidavit of at least two directors including that of the Managing Director or Whole Time Director to the effect that the company has no assets or liabilities as on date and the company has not been carrying on any business during the last one year or more.
2. Latest audited balance sheet and profit and loss account of the company.
3. An indemnity bond from the aforesaid directors to the effect that the liabilities of the company if any will be met by them even after the name of the company is struck off.

In view of the above, Ganesh Textiles Private Limited must first take steps to realize all the assets and pay all the liabilities and make it nil. Thereafter the company may apply to the Registrar of Companies alongwith “nil” balance sheet, affidavit and indemnity bond. After making necessary inquiry, the Registrar will publish notice in the Official Gazette that the name of the company has been struck off. Under Section 560(5) of the said Act, the company shall stand dissolved from the date of publication of notice in the Official Gazette.

Question 4

- (a) *Mr. Mutthu Swami is working as Chief Accountant in Eastern Pharmaceuticals Ltd. The Board of Directors of the said company propose to charge him with the duty of ensuring compliance with the provisions of the Companies Act, 1956 so that accounts and Balance Sheet and Profit and Loss account can be maintained and prepared in accordance with the provisions of law for the time being in force. Draft a "Board Resolution" for the said purpose. Also point out the consequences in case of default, when such resolution is passed. (5 marks)*
- (b) *Mr. Ravindranathan is holding the post of Director in three companies out of which Goodluck Colours Limited is one. For the financial year ended on 31st March, 2009, Goodluck Colours Limited failed to pay interest on loans taken from a financial institution and also failed to repay the matured deposits. On 1st June, 2009 Mr. Ravindranathan accepting the post of Additional Director in Soma Footwear Limited, submitted a declaration that the disqualification specified in Section 274 of the Companies Act, 1956 is not applicable in his case. Decide whether the declaration submitted by Mr. Ravindranathan to Soma Footwear Limited is in order. (5 marks)*

Answer

- (a) **Maintenance of accounts of the Company - Board's resolution:**

“Resolved that pursuant to Section 209(7) and 211(8) of the Companies Act, 1956. Mr. Muthu Swami, Chief Accountant of the company be and is hereby charged with the duty of seeing/ensuring that the requirements of Sections 209 and 211 of the Companies Act, 1956 are duly and fully complied with”.

Resolved further that the said Mr. Muthu Swami is hereby entrusted with the authority to do such Acts, things and deeds as may be necessary or expedient for the purpose of compliance with the requirements of Section 209 and 211 of the said Act.”

Consequences:

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According to Section 209(6) of the Companies Act, 1956 the following persons are responsible

- (a) The Managing Director or Manager of the company of
- (b) All officers and other employees of the company or
- (c) If the company has no Managing Director, every Director of the Company.

Penalty for default is imprisonment upto the six months or fine upto Rs. 10,000/- or both if the persons mentioned above fail to take all reasonable steps to ensure that the provisions of Section 209 are duly complied with by the company or default has been committed by their own willful Act.

(b) Disqualification of Director:

In accordance with the provisions of the Companies Act, 1956, as contained in section 274(1)(g) a person who is already a director of a public company becomes disqualified for being appointed as director if the concerned public company has failed to repay its deposits or interest on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more.

The disqualification specified in Section 274(1) (g) of the Companies Act, 1956 is not applicable in matters of loan from public financial institutions. But Goodluck Colours Limited has failed to repay its deposits on due date and the said failure continues for more than one year, Mr. Ravindranathan is disqualified under the said section of the said Act. The declaration submitted by him is not in order and he is not eligible to the appointment as additional director in Soma Footwear Limited.

Students may note that in view of the wordings in the question an alternative answer is also possible which is as under :

1. The director who shall be exempted from disqualification under section 274(1)(g) will be nominees of Public Financial Institutions, and not other directors. Please refer to the General Circular No. 8/2000 dated 22/03/2001
2. Further, as per the wordings given in the question, it is not clear as to when was (i.e. on what date) the default in payment of the matured deposits occurred for the first time during the financial year ended 31st March, 2009. If default occurred after 31st May, 2009, one year has not elapsed as on 1.6.2009, i.e. the date of appointment of Mr Sachin as additional director. The disqualification is possible if the deposits were matured during April, 2008 to May, 2008 and were not paid and default continued for more than one year. Assumption in the given case is that the company defaulted the payment and the failure continued for more than one year. If default occurred after 1st June, 2008, there is no disqualification in the given case. Therefore, section 274 (1) (g) is not attracted in this case.

Question 5

- (a) *A scheme of reconstruction of Southern Stone Company Limited was approved by its shareholders and creditors in their meeting and resolutions to that effect were passed. Afterwards a few shareholders and creditors of the company raised objections against the said*

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arrangements of reconstruction. The entire paid up capital of the company was wiped out by the accumulated losses. Advise the Directors of the said company about the steps to be taken, to give effect to the proposed scheme under the Companies Act, 1956. (5 marks)

- (b) *Mr. X is an unsecured creditor and has to recover a sum of Rs. 7 lakhs from Global Footwear Company Limited. The said company has become financially insolvent and hence unable to pay its debts. With the object of recovery of the said amount Mr. X is willing to proceed for compulsory winding up of the company. Advise the steps and procedure in this relation under the provisions of the Companies Act, 1956. (5 marks)*

Answer

- (a) **Scheme of Reconstruction:** Since the company in question is a sick company and therefore can be considered as a company liable to be wound up within the meaning of Section 390 of the Companies Act, 1956. The proposed scheme involves a compromise or arrangement with members and creditors and attracts Section 391 of the Act. An application to be submitted before the High Court under Section 391 of the Act. On such application the court may order that a meeting of creditors and/or members be called and held as per the directions of the court.

The company must send notice of meeting to every creditor/member containing a statement setting forth the terms of compromise explaining its effects. At the meetings convened as per directions of the court majority in number representing at least $\frac{3}{4}$ in value of creditors/members present and voting must agree in compromise or arrangements. Thereafter the company must present a petition to the court for confirmation of the compromise or arrangement.

The notice of application made by the company will be served on the Central Government and the court will take into consideration representation, if any, made by the Central Government (Section 394A). The Court will sanction the scheme, if satisfied, after consideration of all relevant matters. Copy of order issued by the court must be filed with the Registrar of Companies and then only the order will come into effect. Copy of the said order must be annexed to Memorandum of Association issued thereafter. The scheme sanctioned by the court shall be binding on all members and creditors even on those who were dissenting.

Note:

1. The powers under section 391 are still exercised by the High Courts and the National Company Law Tribunal is yet to be constituted.
 2. In the given case, it is presumed that the company passed a resolution on its own, not on the directive given by the High Court. The company has to file a petition before the High Court for approval of the scheme and comply with all the conditions as specified in section 391. After approval by the High Court, the scheme shall be binding on the creditors, members and also on the company.
- (b) **Procedure in case of Compulsory Winding-Up:** Mr. X has to take the following steps to put the company into compulsory winding up:

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1. A petition for winding up of the company is to be filed in the High Court, where the registered office of the company is located under section 439(l)(b) read with section 433(e) and (f) of the Companies Act, 1956. A copy of the petition should be served on the company.
2. The petition should be filled along with an affidavit showing sufficient ground for the appointment of a provisional liquidator till an order is passed by the High Court appointing an official liquidator (Rule 106 of the Companies (Court) Rules 1959).
3. After obtaining the winding up order from the high court the same should be advertised within 14 days in a newspaper in English language and in the regional language of the state where the company is registered (Rule 113 of the Companies (Court) Rules, 1959).
4. A certified copy of the winding up order passed by the court should be filed with the concerned Registrar of Companies along with the prescribed fees within 30 days from the date of the winding upto order (Section 445(i)).
5. If the shares of the company are listed in a stock exchange, copy of the petition along with the order may be filed with the stock exchange.
6. The winding up proceedings will be carried out by the official liquidator till dissolution of the company.

Question 6

- (a) *ABC Limited, over years, enjoys high reputation and its General Reserve is many times more than the paid up capital of the company. There is apprehension of cornering the shares of the company by some persons likely to result in change in the Board of Directors which may be prejudicial to the Public interest.*

Advise, as to how can ABC Limited block the transfer of shares of the company under the provisions of the Companies Act, 1956. (5 marks)

- (b) *The Articles of Association of Rajasthan Toys Private Limited provide that the maximum number of Directors in the company shall be 10. Presently, the company is having 8 Directors. The Board of Directors of the said company desire to increase the number of Directors to 15. Advise whether under the provisions of the Companies Act, 1956 the Board of Directors can do so.* (5 marks)

Answer

- (a) **Restrictions and Prohibition of transfer of shares or debentures:** In accordance with provisions of the Companies Act, 1956, as contained in section 250 (4), where the Company Law Tribunal (Company Law Board till the Company Law Tribunal becomes operational, referred to as CLB hereinafter) has reasonable grounds to believe that a transfer of shares in a company is likely to take place whereby a change in the composition of the Board of Directors of a company is likely to take place and the CLB is of the opinion that any such change would be prejudicial to the public interest, the CLB may, by an order, direct that any transfer of shares in the concerned company during such period not exceeding three years, as may be specified in the order, shall be void.

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Further, in accordance with the provisions of the Act, as contained in section 250 (1) & (2), if the CLB is of the view that there are good reasons to find out the relevant facts about any shares and the CLB is of the opinion that such facts cannot be found out unless the restrictions are imposed, as an interim measure, it may, by an order, direct that transfer of any such shares shall be void and no voting rights shall be exercised in respect of such shares. However, the CLB is empowered to vary or rescind its order at any time.

The facts given in the question squarely fall within the provisions of section 250 of the Companies Act, 1956. The management of ABC Ltd. may make a complaint to the CLB and convince it that the transfer of shares in favour of the group of unscrupulous persons would change the composition of the Board of Directors of the company which shall be prejudicial to the public interest and if the CLB is convinced with the plea of the company, it may pass an order as stated above which would block the transfer of shares as stated in the question.

- (b) **Increase in the number of directors:** In accordance with the provisions of the Companies Act, 1956 as contained in Section 259 in the case of a company incorporated after 21st July, 1951 any increase in the number of its directors beyond the maximum fixed by its Articles of Association as originally adopted and registered and in the case of a company existing prior to that date, any increase in the number of directors shall not have any effect unless approved by the Central Government. However, such approval from the Central Government is not required if the number of Directors is increased to 12 or less than that.

The above mentioned provisions of Section 259 of the Companies Act, 1956 are applicable only to public companies or private companies which are subsidiaries of public companies.

In view of the above, since Rajasthan Toys Private Limited is a private company and it is also not subsidiary of any public company, the provisions of Section 259 of the Companies Act, 1956 are not applicable and the Board of Directors of the said company may increase the number of Directors without seeking approval of the Central Government.

Question 7

- (a) *Advise the Board of Director of Spectra Papers Ltd. regarding validity and extent of their powers, under the provisions of the Companies Act, 1956 in relation to the following matters:*
- (i) *Buy-back of the shares of the Company, for the first time, upto 10% of the paid up equity share capital without passing a special resolution.*
 - (ii) *Delegation of Power to the Managing Director of the company to invest surplus funds of the company in the shares of some companies.* (5 marks)
- (b) *Non-executive Directors of ABC Limited, who are neither in the whole time employment of the company nor Managing Directors have been given the following remuneration --*
- (i) *Guarantee Commission has been paid to them for having guaranteed the term loans obtained from a Financial institution.*
 - (ii) *Commission payable to them is calculated on the basis of book-profits arrived at after providing for depreciation as per straight line method,*

Examine the validity of these payments in the light of the provisions of the Companies Act, 1956. (5 marks)

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Answer

(a) Powers of Board of Directors:

- (i) In accordance with the provisions of the Companies Act, 1956 as contained in section 292 (1) (a), a company can buy-back of its shares up to 10 % of the total paid up equity capital and free reserves. Hence, special resolution in general meeting of the company is not required. The proposed buy-back of shares is in order provided other conditions laid down in Section 77A of the Companies Act, 1956 are fulfilled.
- (ii) Section 292 of the Companies Act, 1956 empowers the Board of Directors to delegate to the Managing Director the power to invest in general terms. But Section 372A (2) of the Act provides that no investment shall be made unless it is sanctioned by a resolution passed at a meeting of the board with the consent of all directors present. Section 372A does not provide for delegation. Hence the proposed delegation of power to the Managing Director to invest is not in order.

(b) Remuneration to Non-Executive Directors:

- (i) **Guarantee Commission:** Section 309(1) of the Companies Act, 1956 provides that the remuneration payable to any director shall be inclusive of the remuneration payable for services rendered by him in any other capacity. The question is whether guarantee commission is remuneration within the meaning of Section 309 of the Act. In the case of *Suessen Textile Bearings Ltd. Vs. Union of India (1984)* it has been decided that the guarantee commission paid to the directors for giving surety against loan taken by the company from financial institutions is not a remuneration for any professional services within the meaning of Section 309 and therefore approval of the Central Government is not required.
- (ii) **Depreciation:** Section 350 of the Companies Act, 1956 specifies the manner of ascertainment of depreciation. The amount of depreciation to be deducted is the amount of depreciation as appearing in the books i.e. as shown in the profit and loss account of the relevant financial year at the rates specified in Schedule XIV of the Companies Act, 1956. Thus, the payment of commission calculated on the basis of book profits arrived at after providing for depreciation as per straight-line method is in order.

SECTION-B

Question 8

A to Z Ltd. an unlisted public company, eligible to make a public issue, desires to get its securities listed on Mumbai Stock Exchange, pursuant to a public issue to be made shortly. The company seeks your advice in respect of the following:

- (a) *Whether the company can freely price its equity shares; and*
- (b) *Whether it can issue equity shares to those applicants in the firm allotment category at a price different from the price at which equity shares are offered to the public.*

Advise, keeping in view the SEBI Guidelines in this regard.

(6 marks)

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Answer

According to Chapter III of SEBI Guidelines, an unlisted public company eligible to make a public issue and desirous of getting its securities listed on a recognized stock exchange pursuant to a public issue, may freely price its equity shares or any securities convertible at a later date into equity shares (vide para 3.2.1)

Further any unlisted company may issue such securities to applicants in the firm allotment category at a price different from the price at which the net offer to the public is made provided that the price at which the security is being offered to the applicants in firm allotment category is higher than the price at which securities are offered to the public. The net offer to the public means the offer made to the Indian public and does not include firm allotments or reservations or promoters contributions. (Vide para 3.4.1)

Thus A to Z can follow the above stated guidelines while pricing its equity shares.

Question 9

- (i) *The Reserve Bank of India issued certain directions to Dream Construction Limited, an authorised person under the Foreign Exchange Management Act, 1999 to file certain returns. The Company failed to file the said returns. Decide, as to what penal provisions are applicable against the said authorised person under the said Act. (3 marks)*
- (ii) *Examine under the Foreign Exchange Management Act, 1999 whether "Payment of remuneration to foreign technicians" is a permissible transaction under the provisions of the said Act. (3 marks)*

Answer

- (i) **Penal provisions:** Section 11(3) of the Foreign Exchange Management Act, 1999 provides that where any authorized person contravenes any direction given by the Reserve Bank of India under the said Act or fails to file any return as directed by the Reserve Bank of India, the Reserve Bank of India may, after giving reasonable opportunity of being heard impose a penalty which may extend to Rs. 10,000/- and in the case continuing contraventions with an additional penalty which may extend to Rs. 2,000/- for every day during which such contravention continues.
- (ii) **Foreign Technician:** Salary payable to a foreign technician is a current account transaction. According to Section 5 of the Foreign Exchange Management Act, 1999 any person can sell or draw foreign exchange to or from authorized person if such sale or drawal is a current account transaction. Reasonable restrictions on current account transactions can be imposed by the Central Government. Basically all current account transactions are free unless specifically restricted by the Central Government. Hiring of foreign nationals as technicians is permissible without restriction. There is not ceiling on salary which can be paid as per contract. Their salary can be remitted abroad after tax deducted at source.

Question 10

P Ltd. and Q Ltd. both dealing in chemicals and fertilizers have entered into an agreement to jointly promote the sale of their products. A complaint has been received by the Competition

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Commission of India (CCI) stating that the agreement between the two is anti-competitive and against the interests of others in the trade. Examine with reference to the Provisions of the Competition Act, 2002, what are factors the CCI will take into account to determine whether the agreement in question will have any appreciable adverse effect on competition in the market. (6 marks)

Answer

Factors determining appreciable adverse effect on competition: The Competition Commission of India (CCI), while determining whether an agreement is anti-competitive under Section 3 of the competition Act, 2002, will take into account the following factors.

- (a) creation of barriers to new entrants in the market
- (b) driving existing competitors out of the market.
- (c) foreclosure of competition by hindering entry into the market.
- (d) accrual of benefits to consumers.
- (e) improvements in production or distribution of goods or provision of services and
- (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Question 11

Mr. Gopal is a director in a Bank. The Reserve Bank of India terminates him on the ground that his conduct is detrimental to the interest of the depositors. Decide, whether the Reserve Bank of India can do so under the Banking Regulation Act, 1949. Can the Reserve Bank of India appoint Additional Director in a Bank under the said Act? (6 marks)

Answer

Appointment of Additional Director in a Bank by the RBI: Section 36AA of the Banking Regulation Act, 1949, provides that RBI can terminate any Chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when RBI is of the opinion that conduct of such persons is detrimental to the interest of the depositors or for securing proper management of the banking company. Before such termination concerned person should be given opportunity to be heard of. Such terminated officials can make appeal to the Central Government within 30 days from the date of communication of such termination order. The decision of the Central Government cannot be called into question. In case an order is issued pursuant to this section the concerned person shall cease to hold his office for a period of not exceeding 5 years as may be specified in the order. Contravention of the above provision shall be punishable with a fine, which may extent to Rs. 250 per day.

Any such order shall be valid for a period not exceeding three years or such further periods of not exceeding three years at a time as RBI may specify. Under section 36AB of the said act, RBI is empowered to appoint additional directors for the banking company with effect from the date to be specified in the order, in the interest of the bank or that of depositors. Such

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additional directors shall hold office for a period not exceeding three years or such further periods not exceeding three years at a time.

Question 12

Gaurav Textile Company Limited has entered into a contract with a Company. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so? (6 marks)

Answer

The rules regarding interpretation of deeds and documents are as follows:

First and the foremost point that has to be borne in mind is that one has to find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by a ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will over ride the latter one.

Similarly, if one part of the document is in conflict with another part, an attempt should always be made to read the two parts of the documents harmoniously, if possible. If that is not possible, the earlier part will prevail over the latter one which, therefore, be disregarded.