

PAPER – 4: CORPORATE AND ALLIED LAWS

PART – I : RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER, 2012

Applicability of relevant Amendments/Circulars/Notifications/Regulations etc.

Subject	Amendment	Content	Links For Reference
The Companies Act, 1956	Revised Schedule VI	The MCA vide Notification No. S.O. 447(E) dated 28 th February, 2011 and Notification No. S.O. 653(E) dated 30 th March, 2011 has revised Schedule VI pertaining to the preparation of Balance Sheet and Profit & Loss Account to be prepared for the financial year commencing on or after 1 st April, 2011.	http://www.mca.gov.in/Ministry/notification/pdf/SO_653%28E%29_30mar2011.pdf
The SEBI Act, 1992	SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009	SEBI vide Notification No. LAD-NRO/GN/2011-12/34/2499 dated 30 th January, 2012 has issued SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2012 by amending SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009.	http://www.sebi.gov.in/cms/sebi_data/attachdocs/1328077505398.pdf
The SEBI Act, 1992	SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009	SEBI vide Notification No. LAD-NRO/GN/2011-12/35/3186 dated 7 th February, 2012 has issued SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2012 by amending SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009.	http://www.sebi.gov.in/cms/sebi_data/attachdocs/1328681193686.pdf

Non-Applicability of the following Amendments/Circulars/Notifications

S.No.	Subject Matter	CA Final – Corporate and Allied Laws
1.	The Companies Bill, 2011	Not Applicable
2.	Companies (Second Amendment) Act, 2002 [relating to Winding up]	Not Applicable [Students are advised to study Only General Provisions of winding up as covered under Paragraph 9.4 of the study material]
3.	Provisions relating to Revival and Rehabilitation of Sick-Industrial Companies	Not Applicable

PART – II: QUESTIONS AND ANSWERS**QUESTIONS****SECTION – A: COMPANY LAW****Accounts**

1. (i) An allegation was leveled against Sunpharma Ltd. that the funds of the company are misused. Mr. Aditya, one of the Directors of the company wants to inspect the books of account of the company in order to ascertain whether the allegation was true. But since Mr. Aditya does not have the knowledge of accounting, he appoints Mr. John, his friend and a practicing Chartered Accountant to go through the books of account of the company on his behalf. The company seeks your advice as to whether Mr. John may be allowed to inspect the books of account of the company on behalf of Mr. Aditya. You are required to give your advice to the company keeping in view the provisions of the Companies Act, 1956.

What would be your advice if Mr. Aditya would have been a shareholder only and not a Director of the company?
- (ii) State giving reasons whether the following are true or false? The Board of Directors of Lily Fabrics Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the Company.

Audit

2. (i) At an annual general meeting held on 25th September, 2010, an auditor was appointed to hold office up to the conclusion of next annual general meeting. The next annual general meeting was convened on 20th September, 2011 but stood adjourned without transacting any business. Does the retiring auditor continue in office?

- (ii) The paid-up share capital of Pacific Limited is ₹ 10 crores consisting of 70 lakhs Equity Shares of ₹ 10 each, fully paid-up and 30 lakhs Preference Shares of ₹ 10 each, fully paid up. Nationalised Banks, L.I.C., and IDBI hold among themselves 30 Lakhs Equity shares and 25 Lakhs Preference Shares.

With reference to the provisions of the Companies Act, 1956, examine whether Pacific Limited is a Government Company. Explain the manner in which you would proceed in the matter of appointment of auditors for the said company.

Dividend

3. 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, 2011 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 it if it wants to declare dividend at the rate of 20% for the financial year 2010-11. 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 2010-11.

Directors

4. (i) A company has 11 directors in the Board consisting of the following:
- (a) Mr. Active, Mr. Archive as nominees from two Public Financial Institutions.
 - (b) Mr. First, Mr. Second, Mr. Third appointed at the 2nd Annual General Meeting.
 - (c) Mr. Fourth, Mr. Fifth appointed at the 3rd Annual General Meeting.
 - (d) Mr. Addition was appointed as additional director subsequent to 3rd Annual General Meeting.
 - (e) Mr. Casual was appointed as director in place of Mr. Soul who died and was earlier appointed during the 3rd Annual General Meeting.
 - (f) Mr. Excellent was appointed as Managing Director for 5 years w.e.f. 2nd Annual General Meeting.
 - (g) Mr. One more was appointed as Additional Director soon after Mr. Addition was appointed as Additional Director.

List out in order, who shall be vacating the office at the 4th Annual General Meeting of the company.

- (ii) Greenfield Ltd. has a paid up share capital of ₹ 1.5 crores divided into 15 lakhs equity shares of ₹ 10 each, fully paid. The company decides to buy raw materials from Dream Construction Private Limited to the extent of ₹ 3 Lakhs on credit. M, one of the directors of Greenfield Limited is also a director of Dream Construction Private Limited, holding 30,000 fully paid equity shares in the latter company. The

Dream Construction Private Limited has a total paid up Equity share capital of ₹ 10,00,000 divided into equity shares of ₹ 10 each. Dream Construction Private Limited are the dealers of the type of materials needed by Greenfield Limited. State:

- (a) What procedure must the Greenfield Ltd. follow to execute the deal?
 - (b) What duty does the Companies Act, impose upon M, the director of Greenfield Limited, who is also a director of Dream Construction Private Limited?
 - (c) To what penal consequences will M as director be subject to, in case of breach of duty on his part?
5. (i) The Articles of Association of a company have fixed the maximum strength of the board as 12 directors. At present the Board has 9 directors of whom 6 are liable to retire by rotation and 3 are not liable to retire by rotation. The Board wishes to appoint 3 additional directors. Can they appoint as desired?
- (ii) The managing director of a company is convicted of an offence involving moral turpitude. He prefers an appeal against conviction. Can he continue as managing director during pending disposal of the appeal? Can the appellate court remove the disqualification or stay the same pending the disposal of the appeal?
- (iii) A, one of the shareholders of the company, filed a civil suit in a court for removal of directors B, C and E. Is the suit maintainable?
- (iv) The Board wants to appoint X as a director in a casual vacancy. Due to certain exigencies, the Board could not meet. Advise the Company.
6. (i) Advise the chairman of a large-size public limited company on legal and procedural aspects of the following:
- (a) The chairman wants to take certain furniture items at book value from the company's guest house, for use by his sons.
 - (b) The chairman wants to release company's advertisement in a souvenir being brought out by a trade union having affiliation with a political party. The advertisement is at a cost of ₹ 20,000.
- (ii) The Balance Sheet of International Operators Ltd as at 31-03-2011 disclose the following position

	₹ (in crores)
Share Capital	100
Reserves & Surplus	300
Secured Loans	150
Unsecured Loans	100
Current Liabilities	70

Mr. X, the Managing Director of the company approaches the Royal Bank for a secured loan of ₹ 600 crores to finance the new projects to be taken up shortly. The Bank seeks your advise whether it can grant the loan of ₹ 600 crores on the application of Mr. X. Advise the Royal Bank having regard to the provisions of the Companies Act, 1956.

Meetings, Powers of the Boards and Related Party Transaction

7. (i) The Articles of Association of a company fixed 3 as the quorum for a meeting of the Board. At a meeting of the Board, all the 5 directors were present. They allotted the shares of the company to 3 of the directors. Is it valid?
- (ii) A meeting of the Board of Directors of a company was convened to be held on 30th December, 2010, but the meeting could not be held for want of quorum. The last meeting of the Board of Directors was held on 14th August, 2010. Advise.
- (iii) By an oversight, a notice of meeting of the Board was not sent to one of the directors who was in India. Is the meeting valid?
8. (i) 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.
- (ii) A Mortgage was created over the property of a public company. The loan was advanced by the son of the director. All the directors already knew this fact. Thus the director was interested in the transaction. But he has neither disclosed his interest nor abstained from voting while approving the said transaction. Later on a suit was filed for setting aside the mortgage on the ground that since the interested director voted on the matter, the contract was void. Advise with reasons.
 - (i) Whether the contract became void due to non-disclosure of interest by the concerned director?
 - (ii) Is there any ban on such a contract under the Companies Act, 1956?

Inspection and Investigation

9. A majority of the Board of Directors of M/s High Value Infotech Ltd. have realised that some of the business activities carried out in the name of the company are not in the interest of either the company or its members. They want that the company should make an application to the Central Government to appoint an Inspector to carry out and so as to find out the whole truth. Explain the steps that should be taken to achieve the purpose and draft the application.

Compromise, Arrangements and Reconstructions

10. The shareholders and creditors of Wagonbound Limited, in meeting convened for approval of a scheme of reconstruction of the company, passed resolutions. The scheme of reconstruction provided for the following:

- (i) Sale of vacant land and appropriation of proceeds for payment of outstanding wages, tax dues and repayment of loan.
- (ii) Unsecured creditors to forego 40% of their claims against the company and receive debentures for the balance amount.

A few share holders and creditors raised objections against the said arrangements. Advise the directors about the steps to be taken to give effect to the proposed scheme under the Companies Act, 1956.

Prevention of Oppression and Mismanagement

11. (i) A group of shareholders of M/s High Profile Engineering Ltd. has filed a petition before the Company Law Board alleging various Acts of oppression and mismanagement by the majority shareholders. The petitioner group holds 15% of the issued share capital of the company. During the course of hearing before CLB, some of the petitioner group of shareholders holding about 6% of the issued share capital of the company have withdrawn their consent by stating that they were misled by the group to sign the petition and after coming to know of the facts they have disassociated themselves from the petition and they along with the other majority shareholders have submitted that the petition should be dismissed on the ground of non-maintainability. Examine their contention having regard to the provisions of the Companies Act.
- (ii) A group of shareholders consisting of 25 members decide to file a petition before the Company Law Board for relief against oppression and mismanagement by the Board of Directors of M/s Fly By Night Operators Ltd. The company has a total of 300 members and the group of 25 members holds one –tenth of the total paid –up share capital accounting for one-fifteenth of the issued share capital. The main grievance of the group is that due to mismanagement by the Board of Directors, the company is incurring losses and the company has not declared any dividends even when profits were available in the past years for declaration of dividend. Advise the group of shareholders regarding the success of (i) getting the petition admitted and (II) obtaining relief from the Company Law Board.
12. M/s Continuous Conflicts Ltd. is a company controlled by two family groups. The first family group has four directors, namely, Mr. A, Mr. B, Mr. C and Mr. D on the Board of Directors. The second family group has two representatives Mr. X and Mr. Y on the board. Because of internal family troubles, the first group, by virtue of its majority shareholding removed both Mr. X and Mr. Y as the directors of the company. Aggrieved by this action the second group is planning to move an application before the Company

Law Board. You have been approached for advice. Advise as to the eligibility restrictions regarding filing the application and the chances of getting relief from the Company Law Board, assuming that there is no other material on record in support of oppression of the minority group.

Corporate Winding up and Dissolution

13. (i) In relation to winding up discuss penalties for the following:
- (a) Falsification of books
 - (b) Proper accounts not kept
 - (c) Fraudulent conduct of business
- (ii) M/s Raman Ltd. was wound up by the Court. The official liquidator invited claims from its creditors which stood as under:

	₹
Income tax dues	₹ 11 lakhs
Sales tax dues	₹ 5 lakhs
Dues of workers	₹ 25 lakhs
Unsecured loans payable to directors	₹ 25 lakhs
Trade creditors who supplied raw material	₹ 15 lakhs
Secured creditor being the bankers of the company	₹ 75 lakhs
Total	₹ 156 lakhs

Official Liquidator could realize only ₹ 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.

Producer company

14. (i) Mr. Z an expert in modern agriculture practices is willing to lend his services as a director of M/s. Lord Krishna Cotton Producer Company Ltd. registered under Section 581C of the Companies Act, 1956. Advise Mr. Z as to how he can be appointed as a director including (1) The total number of directors that can be appointed (2) The tenure of the directors (3) The time limit within which the appointment should be made (4) the co-option of directors and (5) the voting powers of such co-opted directors.
- (ii) XYZ Producer Company Limited was incorporated on 1st April, 2010. At present it has got 200 members and its board consists of 10 Directors. The Board of Directors of the company seeks your advice on the following proposal:

Appointment of one expert Director and one Additional Director by the Board for a period of four years.

Advise the Board of Directors explaining the relevant provisions of the Companies Act, 1956.

E-governance

15. Ministry of Corporate Affairs (MCA), Government of India has initiated MCA 21 program, for easy and secure access to MCA services in a manner that best suits the businesses and citizens. What program goals have been set keeping in mind the stakeholders' needs and what are its key benefits?

Companies Incorporated outside India

16. M/s Joel Ltd. was incorporated in London with a paid up capital of 10 million pounds. Mr. Y an Indian citizen holds 25% of the paid up capital. M/s. X Ltd. a company registered in India holds 30% of the paid up capital of Joel Ltd. M/s. Joel Ltd. has recently established a share transfer office at New Delhi. The company seeks your advice as to what formalities it should observe as a foreign company under Companies Act, 1956. State briefly the requirements relating to filing of accounts with the Registrar of Companies by the foreign company in respect of its global business as well as Indian business.

Corporate Secretarial Practice

17. (i) Board of Directors of DBM Limited held a board meeting on 2nd May, 2011 at its registered office. You are required to state the salient points to be taken into account while drafting the minutes of the said board meeting.
- (ii) Draft a board resolution for appointment of Mr. Paul as the managing director for 5 years with effect from 1st June, 2011 of DBM Limited passed in the above stated board meeting.

SECTION – B: ALLIED LAWS

The Securities and Exchange Board of India (SEBI)

18. SEBI received a complaint from an investor that he has not received the payment due to him from a registered stock broker. Explain the action that can be taken by SEBI against the stock broker under the provisions of Securities and Exchange Board of India Act, 1992 and the factors that will be taken into account while taking such action.
19. (i) ABC Company Ltd. an unlisted company, decided to offer Equity Shares through Initial Public issue. Under the provisions of SEBI Act, 1992, the company is required to file draft prospectus and other documents with SEBI and get the documents registered with the Registrar of Companies. Board of Directors of the company seek your advice about the conditions to be complied for the initial public offer (I.P.O.). You being a practicing Chartered Accountant, advise the Board.

- (ii) XYZ Automobiles Ltd. intends to make a public issue of 2,00,00,000 equity shares of ₹ 10 each through the 100% book building process indicating a price band. You are required to answer the following with reference to the SEBI Regulations.
- (i) What is the price band that can be indicated in the red herring prospectus, if the floor price is proposed to be fixed at ₹ 300 per equity share?
 - (ii) What are the restrictions, if the company wants to revise the price band during the bidding period?
 - (iii) How the shares are to be allocated to different categories of investors like Qualified institutional buyers, Retail individual investors, etc.?

Securities Contracts (Regulation) Act, 1956

20. (i) A stock exchange desirous of taking over another stock exchange, seeks your advice on corporatisation. Examining the provisions of the Securities Contracts (Regulation) Act, 1956 and the meaning of the terms 'corporatisation' and 'demutualisation', advise the stock exchange about the steps to be taken to give effect to the scheme of corporatisation.
- (ii) Mr. Patel has transferred his shares of a listed company registered in his name to Mr. Mehta. Mr. Mehta has failed to get the shares registered in his name before the company declared and paid the dividend on the shares. Examine with reference to the provisions of Securities Contracts (Regulation) Act, 1956 whether Mr. Patel is entitled to retain the dividend even though he has transferred the shares before declaration of dividend.

Foreign Exchange Management Act, 1999

21. (i) Mr. Raman is a software engineer of Armtek Ltd. The company sent him to Japan to develop a software programme there on deputation for 2 years. He earned a sum of US \$ 3,000 as a honorarium there. On his return to India he wants to hold this foreign currency with him. Whether Mr. Raman will be allowed to keep the foreign currency with him.
- (ii) 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?

The Competition Act, 2002

22. (i) After ceasing to be a member of the Competition Commission of India with effect from 31st March, 2007, Mr. MKP was offered the post of Executive Director with appropriate remuneration and perquisites in the following organizations with effect

from 1st April, 2007:

- (a) HLL Ltd. a private sector public limited company, whose case was disposed off by the Competition Commission under the provisions of the Competition Act, 2002 in the month of February, 2007.
- (b) Life Insurance Corporation of India.

You are required to state with relevant provisions of the Competition Act, 2002, the option available to Mr. MKP in respect of accepting the offers.

- (ii) The Competition Commission of India has received a complaint that ABC Ltd. has been abusing its dominant position in the food processing industry. Explain briefly the factors that will be considered by the Commissions to ascertain whether ABC Ltd. enjoys a dominant position in the industry.

Interpretation of Statutes, Deeds and Documents

- 23. (i) In what way are the following terms considered as 'internal aid' in the interpretation of statutes?
 - (A) Illustrations
 - (B) Explanation.
- (ii) Explain the rule of "Ejusdem Generis" with reference to the interpretation of statutes. State the cases in which this rule is not applicable.

Banking Regulation Act, 1949, The Insurance Act, 1938, The Insurance Regulatory and Development Authority Act, 1999, The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

- 24. (i) Union Bank of India, a National Bank acquired on 1st January, 2002 a building, fully occupied by various tenants, from Mr. Rahul, the owner of the building, in discharge of a term loan advanced to Mr. Rahul, who had mortgaged the said building as security with the said Bank and failed to repay the loan. The said bank wants to keep the building permanently with it and earn the rent from tenants. You are required to state with reference to the provisions of the Banking Regulation Act, 1949 whether the said bank can do so.
- (ii) Explain Asset Reconstruction, Financial Assets under the Securitization and Reconstruction of Financial Assets Enforcement of Security and Interest Act, 2002.

Prevention of Money Laundering Act, 2002

- 25. How the trials under PMLA are conducted in special courts? Is the offence under PMLA bailable?

SUGGESTED ANSWERS / HINTS

1. (i) According to Section 209 (4) of the Companies Act 1956, the books of account and other books and papers shall be open to inspection by any director during the business hours.

The right of inspection given by this sub-section is not so restricted that it can only be exercised personally by the director. In *Vakharia Vs Supreme General Film Exchange CO. Ltd* it was held that a director is entitled to take inspection of accounts personally or through an agent provided that there is no reasonable objection to the person chosen and the agent undertakes not to utilize the information obtained by him for any purpose other than the purpose of his principal.

As the right of inspection is a statutory right given under this sub-section, a director who is prevented from or refused inspection may enforce his right through court.

As such, Mr. Aditya being the director, can appoint Mr. John to inspect the Books of accounts of the company.

In case Mr. Aditya is the member of the company

As per the provisions of the Act the board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulation, the accounts and books of the company, or any of them, shall be open to inspection of members not being directors. No member (Not being a director) shall have any right to inspection any account or books or document of the company except as conferred by law or authorized by the board or by the company in general meeting.

In case Mr. Aditya is a member of the company, he shall be able to inspect the books of account only if he is given such a right by ordinary resolution of the members or if authorized by the board. But even in such case Mr. Aditya would have to exercise the right personally and not through a proxy i.e. he can himself inspect the books but cannot ask Mr. John to inspect the books in his behalf.

- (ii) False. The accounts must be audited. Section 218 of the Companies Act, 1956 clarifies that any copy of Balance Sheet cannot be issued, circulated or published without the annexures and attachments. The attachments and annexures are – Profit and Loss account, Balance Sheet of subsidiary company, Auditor's Report and Report of Board of Directors. Thus, a Balance Sheet without Auditor's Report or without Report of Board of Directors cannot be issued, circulated or published. It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies.
2. (i) According to Section 224(1) of the Companies Act, 1956, an auditor appointed at an Annual General Meeting holds office from the conclusion of that Annual General Meeting to the conclusion of the next Annual General Meeting. In the given case,

the auditor was to hold office up to conclusion of the Annual General Meeting duly convened but which stood adjourned. As the adjourned meeting is merely a continuation of the original meeting, the Annual General Meeting remains unconcluded and the retiring auditor continues to hold the office till the conclusion of the meeting.

- (ii) According to Section 617 of the Companies Act, 1956, Government Company means a company in which not less than 51% of the paid up share capital is held by the Central Government, or any State Government(s), or partly by the Central Government and partly by one or more State Governments. Shareholdings of financial institutions and nationalized banks are not to be taken into account.

In the instant case, Nationalised Banks, L.I.C., and IDBI hold among themselves 30 Lakhs Equity shares and 25 Lakhs Preference Shares of Pacific Limited, therefore, Pacific Ltd. is not a Government Company.

However, as per section 619B for the purpose of appointment of auditors, shareholdings of nationalized banks and other named Institutions shall be taken into account. Thus, the auditor of Pacific Ltd. shall be appointed in the same manner as that of any other Government Company as per the provisions of section 619, namely by the Comptroller and Auditor General of India (C&AG).

3. In accordance with sub-section (3) of Section 205A in case of absence or inadequacy of profits in any year, dividend can be paid out of the accumulate profits earned by the company in the previous year and transferred by it to reserves, in accordance with Rule 2 of the Companies (Declaration of Dividend Out of Reserves) Rules, 1975 which is as under-

Declaration of Dividend out of Reserves [Rule 2]

In the event of inadequacy or absence of profits in any year, dividend may be declared by a company for that year out of the accumulated profits earned by it in previous years and transferred by it to the reserves, subject to the condition that the rate of the dividend declared shall not exceed the average of the rates at which dividend was declared by it in the five years immediately preceding that year or ten per cent of its paid-up capital, whichever is less. In the given case, proposed rate of dividend is 20%. Therefore, it is not possible to pay 20% dividend out of reserves.

Dividend out of accumulated profits

The limit regarding rate of dividend, as referred above, does not apply where dividend is paid out of accumulated profits but dividend at the rate of 20% should be paid only after providing depreciation for the financial year 2010-11.

4. (i) Section 255 of the Companies Act, 1956, provides that unless the Articles provide for retirement of all the directors at every general meeting, not less than two-thirds of the total number of directors of a public company, or of a private company which is a subsidiary of a public company, shall retire by rotation. In terms of section 256

of the Act, one-third of the directors liable to retire by rotation shall retire at the Annual General Meeting of the Company. If the number of directors liable to retire by rotation is not three or a multiple of three, then the number nearest to one-third shall retire from the office of director.

In order to determine the directors who shall retire by rotation at every general meeting, it is provided that the persons who have been longest in office since their last appointment shall be liable to retire. As between the persons who became directors on the same day, the directors who shall retire may be determined by agreement among themselves. In the absence of any such agreement the persons liable to retire shall be chosen by lot.

Of the 11 directors mentioned in the question, Mr. Active and Mr. Archive, who are nominees of Public Financial Institutions respectively, are non-rotational directors and are not liable to retire. Mr. Excellent being the Managing Director, is also not liable to retire. The position in regard to the remaining 8 directors is as under:

- (i) Mr. Addition & Mr. One More who were appointed as Additional Directors in subsequent to 3rd Annual General Meeting respectively, shall vacate office on the date of 4th Annual General Meeting.
 - (ii) Mr. Casual was appointed in place of Mr. Soul who died and will, therefore, hold office till the date Mr. Soul would have held office.
 - (iii) Of the 6 rotational directors, [viz., Mr. First, Mr. Second, Mr. Third, Mr. Fourth, Mr. Fifth and Mr. Casual, 2 directors who constitute one-third, and who have been longest in office are liable to vacate office. Accordingly, two amongst Mr. First, second and third who were appointed in 1st Annual General Meeting and have been longest in office, shall vacate office. Amongst themselves, either they can decide by mutual consent or by draw of lots.
- (ii) (a) Section 297 of the Companies Act, 1956 prohibits a director and certain other persons including a private company of which the director is a member or director from entering into a contract for sale, purchase, or supply of, *inter alia* (i.e. among other things) materials without the consent of the Board of Directors. Further, in case the company has a paid up capital of ₹ 1 crore or more, approval of the Central Government shall also be needed. Thus, in the present case, since the capital of the Greenfield Ltd. is above ₹ 1 crore, the requisite approvals of the Board of Directors and the Central Government must be obtained.
- (b) Section 299 of the Act charges a director to disclose his interest. He must have, therefore, disclosed the fact of his being a director of the Dream Construction Private Ltd. It is also his duty not to participate or vote in the Board's meeting in pursuance of section 300.
- (c) Consequences of non-disclosure of participation shall be:

- (a) M shall have to vacate office of the director (section 283)
 - (b) shall be punishable with fine which may extend to ₹ 50,000. [section 299(4)].
- 5. (i) According to Section 260 of the Companies Act, 1956, Board can appoint additional directors provided the Articles give power to the Board to appoint such directors, and the number of directors and additional directors shall not exceed the maximum strength fixed by the Articles. In the instant case, after the appointment of 3 additional directors, the total strength of the Board will go up to 12, which is within the maximum fixed by the Articles. Hence, Board can appoint the additional directors.
- (ii) The managing director cannot continue as such, as he is disqualified to act as managing director, pursuant to section 267 of the Companies Act, 1956. The purpose of section 267 is to ensure that the management and affairs of the company and its control is not in the hands of a person who has been found by a competent Court to be guilty of an offence involving moral turpitude. Section 267 enacts that any person who has suffered a conviction by a Court of an offence involving moral turpitude shall not be appointed or employed or continue in employment or appointment by any company as its managing director. Thus, the provisions are stringent. Under Code of Criminal Procedure (CrPC), an appeal against the order of conviction may either be dismissed summarily or heard by an Appellate Court. However, order of conviction does not on the mere filing of an appeal disappear and it is difficult to hold that section 267 must be read to apply only to final order of conviction as such interpretation may defeat the very object and purpose for which it came to be enacted. In view of the above observations, the Appellate Court will not be inclined to stay the operation of section 267 pending disposal of appeal [*Roma Narang vs Ramesh Narang* (1995) SCALE 276]
- (iii) The Civil Court has no jurisdiction to entertain the suit for removal of directors of a limited company as it relates to the internal management of the company which is governed by the Companies Act. In *Ketan Industries Private Ltd. v Manju Ravindra Prasad Ketan*, one of the two issues before one High Court was the same as appears here. The Court held that the shareholder has a right to remove directors under section 284 of the Companies Act, which provides machinery for enforcement of the right and Civil Court has no jurisdiction to entertain a suit for removal of directors.
- (iv) According to Section 262 of the Companies Act, 1956, where the office of a director appointed by the public company in general meeting is vacated before his term of office expires in the normal course, resulting in a casual vacancy may, in default of and subject to any regulations in the articles, be filled by the Board of Directors at a meeting of the Board. Since Section 262 requires the filling of casual vacancy at a

Board meeting, appointment can be made only by a validly convened and constituted Board meeting. This cannot be done by a resolution by circulation.

6. (i) (a) Section 297 of the Companies Act, 1956 lays down that no director or his relative shall enter into any contract for the sale, purchase or supply of any goods, materials or services, with the company, without the consent of the company's Board of Directors and if the paid-up capital of the company is ₹ 1 crore or above prior approval of the Central Government is also required.

However, the section provides certain exceptions but the given case is not covered by any of the exceptions as the proposed purchase is not at the prevailing market price but at book value, which apparently is much less than the prevailing market value nor is the company regularly trading in or doing business of sale and purchase of furniture.

- (b) Section 293A of the Companies Act, 1956 lays down that no company, which has been in existence for less than three financial years shall contribute any amount directly or indirectly, to any political party or for any political purpose to any person.

However, a company, which has been in existence for more than three years may contribute any amount or amounts, directly or indirectly, to any political party or for any political purpose to any person provided that the aggregate of the amounts so contributed in any financial year shall not exceed five per cent of its average net profits determined in accordance with the provisions of section 349 and 350 of the act, during the three immediately preceding financial years.

Assuming that the company in question has been in existence for three or more years, it can issue the proposed advertisement in the souvenir of the trade union having political affiliation at a cost of ₹ 20,000 provided this amount and all other such amounts paid in the financial year are within the ceiling of 5% of the company's average net profits of the three immediately preceding years.

- (ii) Powers of directors related to borrowing funds by the company:

The management of Royal Bank should be aware of the provisions of Sections 292 and 293 of the Companies Act, 1956, which govern the powers of directors in the matter of borrowing funds by the company. According to Section 292, the Board of Directors of International operators Ltd. can exercise the borrowings by passing a resolution at a duly convened meeting of the Board of Directors. However, under Section 293, the Board of Directors of a public company cannot, except with the consent of the members of the company in general meeting borrow moneys, where the moneys to be borrowed together with the moneys already borrowed by the

company, exceeds the aggregate of the paid up capital of the company and its free reserves.

In the present case, the proposal of the company to borrow ₹ 600 crores exceed the paid up share capital and free reserves of the company to the tune of ₹ 200 crores (i.e. ₹ 600 crores – ₹ 400 crores = ₹ 200 crores) without taking into account the existing loan. Thus Royal Bank should advise Mr. X, the Managing Director of the company to get the approval of the shareholders of the company as provided in Section 293 before considering the request of the company for a loan of ₹ 600 crores. In case, the loan is secured by mortgaging the assets of the company the bank should also ensure that the particulars of the charge are registered with the Registrar of Companies as provided in Section 125 of the Companies Act, 1956.

7. (i) The provisions in regard to quorum for a Board meeting are contained in section 287 of the Companies Act, 1956. It is provided therein that the quorum for a Board meeting shall be one-third of the total number of directors of a company (any fraction contained in that one-third shall be rounded off as one) or two directors whichever is higher. It is further provided that where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength, the number of disinterested directors present at the meeting being not less than two shall form the quorum. The company is, however, free to fix a higher quorum for the Board meeting.

Viewed in the context of the above provisions, the company has fixed the quorum for a Board meeting at 3. In this case, out of five directors present at the meeting, the number of interested director is three. As such, the remaining two directors who are not interested do not constitute a quorum and hence the meeting cannot be validly convened. Therefore, the allotment of shares at the aforesaid meeting is not valid.

The proviso to section 287(2) cannot also be availed of as the interested directors, who are three, are not equal to or more than two-thirds of the total strength of directors. The figure representing two-third will be 4 by rounding off fraction, if any. Hence, it can be assumed that the allotment made at the Board meeting will not be valid.

- (ii) As per section 288 of the Companies Act, 1956, if a meeting of the Board could not be held for want of quorum, then unless the Articles provide otherwise, the meeting shall automatically stand adjourned to, the same day in the next week, at the same place or if that day is a public holiday till the next succeeding day which is not a public holiday.

Sub section (2) of the section 288 further provides that the provisions of section 285 shall not be deemed to have been contravened merely by reason of the fact that meeting of the Board which has been called in compliance with the terms of that section, could not be held for want of quorum.

- (iii) According to section 286 of the Companies Act, 1956, notice of every meeting of the Board shall be given in writing to every director in India and to his usual address in India. As this is a compulsory requirement, failure to do so will make the meeting and the resolution passed at the meeting null and void.

8. (i) **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:

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 ₹ 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 proposed 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).

Any company having paid up share capital of ₹ 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 i.e. 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'

- (ii) Section 299 of the Companies Act, 1956 requires the disclosure of interest by a director while section 300 prohibits an interested director to participate or vote in respect of that particular transaction at the Board meeting. Further his presence will not be counted for quorum also. But where a whole body of directors is aware of the facts relating to an interest of a director, a formal disclosure is not necessary. (*Ramakrishna Rao vs. Bangalore Race Club*).

The mere voting by an interested director will not render the contract void or voidable unless with the absence of that vote, there would have been no quorum. The mere fact that voting under such situation is an offence punishable with fine under section 299(4) and 300(4) of the Act does not *ipso facto* render the contract void or voidable. In this case, there is no allegation of earning secret profits. Thus

the action against the company will fail as the contract of mortgage is fair and in the interest of the company.

Under section 299 and 300 of the Act, there is no ban on contract in which a director is interested. The only requirement is that the interest should be disclosed, bonafide and fair. (*P. Leslie & co. vs. Vo Wapshare*)

Even where the interest is not disclosed the transaction is only voidable against the interested director, and not void. (*Narayan Das Shreeram Somani vs Sangli Bank*).

9. According to Section 237 of the Companies Act, 1956 the Central Government shall appoint one or more persons as inspectors to investigate the affairs of the company if the company by a special resolution or the court by an order declares that the affairs of the company should be investigated. The Central Government may also appoint an inspector if in the opinion of the Company Law Board, there are circumstances suggesting that:

- (i) the business of the company is being conducted with intent to defraud creditors, members or any other persons.
- (ii) the persons concerned in the formation of the company or the management of its affairs have been guilty of fraud, misfeasance or misconduct towards the company or its members.
- (iii) the members have not been given all information with respect to its affairs.

Thus the directors of High Value Infotech Ltd have three options before them to get the company's affairs investigated. Firstly, they can get a special resolution passed in a general meeting of the company. Secondly they can approach the court with a petition so that the court directs the Central Government to order investigation. The directors can also approach the Company Law Board with a petition. However, the Central Government may order an investigation on the recommendation of the Company Law Board. Thus the Central Government has a discretionary power in the last case; whereas in the first two instances the Central Government has no such discretion and it has to order the investigation.

Draft Application:

High Value InfoTech Ltd. (Address)

Dated 1st April, 2011

The Secretary,
The Ministry of Corporate Affairs,
New Delhi

Sir,

At a meeting of the shareholders of the company, the members have passed the following special resolution unanimously:

“Resolved that the Central Government be approached to appoint an Inspector to carry out an investigation whether the following activities carried out in the name of the Company is or is not in the interest of either the company or its members.

“(Name a couple of activities)”

The said unanimous resolution was passed at an extraordinary general meeting of the Company held on 10th March, 2011.

It is, therefore, prayed that the Central Government be pleased to appoint as per Section 237 of the Companies Act, an inspector to investigate the affairs of the company regarding the matters mentioned in the above resolution and communicate its decision to the company.

Yours respectfully,

For and on behalf of High Value InfoTech Ltd.

Company Secretary.

10. **Reconstruction Scheme of Company:** The provisions contained in sections 391 to 394 of the Companies Act, 1956 are applicable to Wagonbound Company Limited as it 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 it attracts section 391 of the said Act.

While the company or any creditor or member can make application to the Court/Tribunal under Section 391, it is usual for the company to make an application. On such application the Court/Tribunal may order that a meeting of creditors and/or members be called and held as per the directions of the Court/Tribunal.

The company must send notice of meeting to every creditor/member containing a statement setting forth the terms of compromise or arrangement explaining its effect. Material interest of directors, Managing Director or manager of the company in the scheme and the effect of scheme on their interest should be fully disclosed (Section 393). At the meetings convened as per directions of the Court/Tribunal majority in number representing at least $\frac{3}{4}$ in value of creditors/members present and voting must agree to compromise or arrangement. Thereafter the company must present a petition to the Court/Tribunal for confirmation of the compromise or arrangement.

The notice of application made by the company will be served on the Central Government and the Tribunal will take into consideration representation, if any, made by

the Central Government (Section 394A). The Court/Tribunal will sanction the scheme, if satisfied, after considering all relevant matters.

Copy of order issued by the Court/Tribunal 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 every Memorandum of Association issued thereafter. The scheme sanctioned by the Court/Tribunal shall be binding on all members and creditors even those who were dissenting.

Note: The power under the scheme of reconstruction etc. is still with the High Courts pending constitution of the National Company Law Tribunal.

- 11 (i) The contention of the majority shareholders is not correct and the CLB will continue to proceed with the petition filed for oppression and mismanagement. It has been held by the Supreme Court in *Rajahmundry Electric Corporation vs. A.Nageshwara Rao* that if some of the consenting members have subsequent to the presentation of the application, withdrawn their consent, it would not affect the right of the applicant to proceed with the application. Thus, the validity of the petition must be judged on the facts as they were at the time of its presentation. Neither the right of the applicant to proceed with the application, nor the jurisdiction of the CLB to dispose it of on its own merits can be affected by events happening subsequent to the presentation.
- (ii) Section 399 of the Companies Act, 1956 provides the right to apply to the Company Law Board for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:
 - (i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.
 - (ii) In the case of company not having share capital not less than one-fifth of the total number of its members.

Since the group of shareholders do not number 100 or hold 1/10th of the issued share capital or constitute 1/10th of the total number of members, they have no right to approach the CLB for relief. However, the Central Government, if it is of the view that circumstances exist which make it just and equitable so to do, may authorize any member(s) to apply to the CLB (Section 399(4)). So, members any approach Central Government to authorize them to approach CLB in spite of deficiency in numbers.

As regards obtaining relief from CLB, continuous losses cannot, by itself, be regarded as Oppression (*Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth*).

Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression. (*Thomas Veddon V.J. (v) Kuttanad Robber Co. Ltd.*).

Thus the shareholders may not succeed in getting any relief from CLB.

12. The management of any company registered under the Companies Act, 1956 is based on the principle of majority rule and the voting power of every member depends upon the number of shares held by them. Thus one single individual holding the majority shares can overrule the views of the other members who may be more in numerical numbers but not in voting power. However, certain rights have been given to minority shareholders who complain that the affairs of the company are being conducted in a manner oppressive to any member or members. In such an event, the minority shareholders can apply to the Company Law Board for relief against oppression and mismanagement. The eligibility restriction for filing an application to the Company Law Board is contained in Section 399 of the Companies Act. According to the said section, the application to CLB can be made in the case of a company having share capital, by not less than one hundred members or not less than one-tenth of the total number of members whichever is less or members holding not less than one-tenth of the issued share capital provided, the applicants have paid all calls and other dues on their respective shares. In the case of a company not having the share capital, the application can be filed by members holding not less than one-fifth of the total number of members.

In the present case the majority group have removed the minority directors from the board. The election and removal of directors is the prerogative of the members and such an act cannot be per se treated as oppressive to the minority shareholders, unless there is an allegation of mismanagement to the detriment of the shareholders. The application under section 397/398 requires to prove oppressive conduct to their members in their capacity as members. Thus the minority group consisting of two directors Mr. X and Mr.Y will not be able to successfully prosecute the case against the majority directors in the absence of any material or record in support of oppression and mismanagement of the minority group.

13. (i) (a) **Falsification of books:** If with intent to defraud or deceive, any person, any officer or contributory of a company destroys, mutilates, alters, falsifies, secrets, etc. any books, papers or securities, or is a party to any of these acts, he will be punishable with imprisonment for a period extending up to 7 years and fine. He will also be equally punishable, if he makes or is privy to the making of, any false or fraudulent entry in any register, books of account, etc. belonging to the company (Section 539).
- (b) **Liabilities where proper accounts not kept:** If in a winding-up it is found that proper books of account have not been kept throughout the period of two years preceding the commencement of winding-up (or the period between the

incorporation of the company and the commencement of the winding-up whichever is shorter) the officers of the company would be liable to imprisonment for a term extending to one year. They may however, escape liability, if they can show that they had acted honestly, and that in view of the circumstances in which the business was carried on, the default was excusable.

Proper books of account will be deemed to have been kept if there have been kept (a), such books or accounts as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day-to-day in sufficient detail of all cash received and all cash paid, and (b) statement of annual stock taking with all necessary particulars, where the business of the company has involved dealings in goods (Section 541).

- (c) **Liabilities for fraudulent trading:** If, in the course of a winding-up, it transpires that the business has been carried on with the intent to defraud creditors or others, the Tribunal may, on the application of the Official Liquidator, or the liquidator or any creditor or contributory, declare that any person who was knowingly a party to such a carrying on of the business shall *be personally liable to on unlimited extent* for all or any of the company's debts or liabilities, may also be called upon to pay fine up to ₹ 50,000 or sentenced to imprisonment up to two years or with both (Section 542).
- (ii) 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 ₹ 80 lakhs which will be distributed amongst the secured creditor and workmen in proportion to their dues, as follows:

Workmen

(1/4th of ₹ 80 lakhs) : ₹ 20 lakhs

Secured creditor

(3/4th of ₹ 80 lakhs) : ₹ 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.

14. (i) According to Section 581P of the Companies Act, 1956 the members who sign the memorandum and the articles and designated as first directors and shall given the affairs of the company until the directors are appointed at the Annual General Meeting. According to Section 581-0 every producer company shall have at least five and not more than fifteen directors. The election of directors shall be conducted within 90 days from the date of registration of the producer company. In the case of Inter-state co-operative society the election shall be held within a period of 360 days.

The period of office of director shall be not less than one year and not exceeding 5 years as may be specified in the articles.

The directors are normally elected and appointed by the members in the Annual General Meeting.

The Board may also co-opt one or more expert directors as an additional directors. Such directors cannot exceed $1/5^{\text{th}}$ of the total number of directors.

The expert directors shall not have the right to vote in the election of Chairman but shall be eligible to be elected as Chairman if it is provided by the articles. The maximum period for which such experts are appointed as directors will be as provided in the articles of association and it cannot exceed 5 years.

Thus Mr. Z can be appointed as expert director but he will not have any voting right in the election of chairman of the Board of Directors. His tenure of office can be between one to five years.

- (ii) **Appointment of expert director or additional director:** Section 581P(6), Companies Act, 1956 empowers the Board of Directors of a producer company to cooperate one or more expert directors or an additional director not exceeding one fifth of the total number of directors for such period as the Board may deem of it. But the maximum period shall not exceed the period specified in the Articles of the company [Proviso 2 to Section 581P(6)].

The number of directors proposed to be co-opted is only 2 and it does not exceed one-fifth of the total number of directors. They can hold office for the period specified by the Board provided it does not exceed the period specified in the Articles (Section 260 stipulating that the additional director can hold office only upto the date of the next annual general meeting is not applicable to a producer company). Hence the proposed appointment of one expert director and one additional director is in order.

15. Ministry of Corporate Affairs (MCA), Government of India has initiated MCA 21 program, for easy and secure access to MCA services in a manner that best suits the businesses and citizens.

The program goals have been set as follows keeping in mind stakeholders' needs:

- (a) Business enabled to register a company and file statutory documents quickly and easily
- (b) Public to get easy access to relevant records and effective grievances redressal
- (c) Professionals to be able to offer efficient services to their client companies
- (d) Financial Institutions to easily find charges registration and verification
- (e) Employees to ensure proactive and effective compliance of relevant laws and corporate governance

MCA 21 is envisioned to provide anytime and anywhere services to businesses. It is a pioneering program being the first mission mode e-governance project being undertaken in the country. This program builds on the GoI vision to introduce a Service Oriented Approach in the design and delivery of Government services, establish a healthy business ecosystem and make the country globally competitive.

MCA 21 seeks to fulfill the requirements of the various stakeholders. The key benefits of MCA 21 project are as follows:

- (a) Expeditious incorporation of companies
 - (b) Simplified and ease of convenience in filing of Forms/ Returns
 - (c) Better compliance management
 - (d) Total transparency through e-Governance
 - (e) Customer centric approach
 - (f) Increased usage of professional certificate for ensuring authenticity and reliability of the Forms / Returns
 - (g) Building up a centralised database repository of corporate operating
 - (h) Enhanced service level fulfillment
 - (i) Inspection of public documents of companies anytime from anywhere
 - (j) Registration as well as verification of charges anytime from anywhere
 - (k) Timely redressal of investor grievances
 - (l) Availability of more time for MCA employees for monitoring and supervision
16. (1) As per section 591 companies falling under the following two classes shall be known as foreign companies namely:
- (i) companies incorporated outside India which, after the commencement of this act, establish a place of business within India, and
 - (ii) companies incorporated outside India which have, before the commencement of this act, established a place of business within India and continue to have

an established place of business within India at the commencement of this act.

- (2) notwithstanding anything contained in sub-section (1), where not less than fifty percent of the paid up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside Indian and having an established place of business in India, is held by one or more citizens of Indian or by one or more bodies corporate incorporated in India, or by one or more citizens of Indian and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.

Here as more than 50% of the paid-up capital is held by Indian citizen and Indian company M/s Joel Ltd. shall be treated as Indian company. It shall have to comply with such provision of the act as may be prescribed as if it were a company incorporated in India.

Joel Ltd. has to submit the following document with the registrar of companies with 30 days of establishment of business in India.

- (a) a certified copy of the charter, statutes, or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company; and, if the instrument is not in the English language, a certified translation thereof.
 - (b) the full address of the registered or principal office of the company;
 - (c) a list of the directors and secretary of the company, containing the particulars mentioned in sub-section (2).
 - (d) the name and address or the names and addresses of the some one or more persons resident in India, authorized to accept on behalf of the company service of process and any notices or other documents required to be served on the company; and
 - (e) the full address of the office of the company in India which is to be deemed its principal place of business in India.
17. (i) While drafting the minutes of a board meeting following salient points should be kept in mind:
- (a) the minutes may be drafted in a tabular form or they may be drafted in the form of a series of paragraphs, numbered consecutively and with relevant headings.
 - (b) the place, date and time of the meeting should be stated.
 - (c) the minutes should contain the constitution of the meeting, i.e., persons present and the capacity in which present, e.g. name of the person chairing

the meeting, names of the directors and secretary, identifying them as director or secretary, names of persons in attendance like auditor, internal auditor etc. The minutes should also contain the subject of leave of absence granted, if any, to any of the board members.

- (d) content of the meeting giving serial number of the minute, brief subject heading, full terms of the resolution adopted including the statistical details, if any.
 - (e) names of the directors dissenting or not concurring with any resolution passed at the board meeting.
 - (f) reference about interested directors abstaining from voting is also required to be stated in the minutes.
 - (g) Chairman's signature and date of verification of minutes as correct.
- (ii) Resolution passed at the meeting of board of directors of DBM Limited held at its registered office situated at on 2nd May, 2011 at AM.

"RESOLVED that subject to the approval by the shareholders in a general meeting and pursuant to provisions of Sections 198, 309, 310, Schedule XIII and other applicable provisions of the Companies Act, 1956, Mr. Paul be and is hereby appointed as the Managing Director of the Company with effect from 1st June, 2011 for a period of five years on a remuneration approved by the Remuneration Committee as enumerated below:

- (1) Salary: ₹ per month
- (2) Perquisites, Benefits and Facilities

"RESOLVED FURTHER that Mr. Paul, so long as the functions as the Managing Director of the Company shall not be entitled to any sitting fee for attending any meeting of the board of directors or any committee thereof and that he shall not be liable to retire by rotation."

"RESOLVED FURTHER that Mr. Paul till he holds the office of Managing Director of the Company shall not become interested or concerned in any selling agency directly or through his wife or minor children in future without prior approval of the Central Government."

"RESOLVED FURTHER that Mr. Paul, the Chairman, as well as the Company shall have right to terminate the appointment by giving 3 (three) months' notice in writing."

"RESOLVED FURTHER that the Secretary of the company be and is hereby directed and authorized to file necessary returns with the Registrar of Companies and to do all other necessary things required under the provisions of the Companies Act, 1956."

18. **Penalty for default in case of stock brokers:** Section 15F of Securities and Exchange Board of India Act, 1992 provides for penalty for default in case of stock brokers. If any person who, is registered, as a stock broker under this Act:
- (a) fails to issue contract notes in the form and in the manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that broker.
 - (b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner or within the period specified in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
 - (c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty of one lakh rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

Factors for taking into account while action

While adjudging quantum of penalty under section 15J, the adjudicating officer shall have due regard to the following factors:

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the defaults.
- (b) the amount of loss to an investor or group of investors as a result of the default.
- (c) the repetitive nature of the default.

Taking into consideration the above factors, the adjudicating officer may levy a maximum penalty as prescribed in Section 15F for default by the concern stock broker in making the payment to the investor.

19. (i) An issuer making a public issue shall satisfy the conditions as stated below on the date of filing draft offer document with the SEBI and also as on the date of registering the offer document with the Registrar of Companies. Such an issuer company make an IPO, if:
- 1. It has net tangible assets of at least ₹ 3 crores in each of the preceding three full years of 12 months each, of which not more than 50% net held in monetary assets.
Provided that if more than 50% of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project;
 - 2. It has a track record of distributable profits in terms of Section 205 of the Companies Act, 1956, for at least 3 out of the immediately preceding 5 years;

Provided that extraordinary items shall not be considered for calculating distributable profits.

3. It has a net worth of at least ₹ 1 crore in each of the preceding three full years.
 4. The aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed 5 times its pre-issue net worth as per the audited balance sheet of the preceding year.
 5. If it has changed its name within the last one year, at least 50% of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.
- (ii) Schedule XI of the SEBI (ICDR) Regulations, 2009 contains provisions relating to Book-Building process. Clause 8 (b) deals with the Floor Price and Price Band. According to the said clause where the issuer decides to opt for price band instead of floor price, the issuer shall also ensure compliance with the following conditions:
- (1) The cap of the price band should not be more than 20% of the floor of the band; i.e cap of the price band shall be less than or equal to 120% of the floor of the price band.
 - (2) The price band can be revised during the bidding period in which case the maximum revision on either side shall not exceed 20% i.e floor of price band can move up or down to the extent of 20% of floor of the price band disclosed in the red herring prospectus and the cap of the revised price band will be fixed in accordance with clause (i) above.
 - (3) Any revision in the price band shall be widely disseminated by informing the stock exchanges, by issuing press release and also indicating the change on the relevant website and the terminals of the syndicate members.
 - (4) In case the price band is revised, the bidding period shall be extended as per provisions of sub-regulation (2) of regulation 46.
 - (5) The manner in which the shortfall, if any, in the project financing, arising on account of lowering of price band to the extent of 20% will be met shall be disclosed in the red herring prospectus. It shall also be disclosed that the allotment shall not be made unless the financing is tied up.

Accordingly, in the given problem

- (i) The price band that can be indicated in the red herring prospectus, if the floor price is to be fixed at ₹ 300 per share will be 20% of the floor price i.e. ₹ 300 + 20% = ₹ 360 per share.
- (ii) If the company wants to revise the price band during the bidding period, the maximum revision on either side shall not exceed 20% i.e floor of price band

can move up or down to the extent of 20% of floor of the price and the cap of the revised price band shall not be more than 20% of the revised floor price band. In other words, on the lower side it can be down by ₹ 240 ($300 - 20\% = ₹ 260$) and 360 being the revised price band $- 20\% = ₹ 288$) and on the upper side, it can be ₹ 360 ($₹ 300 + 20\%$) and ₹ 432 ($360 + 20\%$).

- (iii) Any revision in the price band shall be widely disseminated by informing the stock exchanges, by issuing press release and also indicating the change on the relevant website and the terminals of the syndicate members. Regarding the period of subscription, Regulation 46 provides that a public issue shall be kept open for at least three working days but not more than ten working days including the days for which the issue is kept open in case of revision in price band. In case the price band in a public issue made through the book building process is revised, the bidding (issue) period disclosed in the red herring prospectus shall be extended for a minimum period of three working days, provided that the total bidding period shall not exceed ten working days.
- (iv) As per Regulation 42, if an issue is made through book building process, the allocation to different categories of investors will be as follows:
 - o Not less than 35% to retail individual investors
 - o Not less than 15% to non-institutional investors
 - o Not less than 50% to qualified institutional buyers, five per cent. of which shall be allocated to mutual funds:

20. (i) Corporatisation and Demutualisation of Stock Exchanges

Corporatisation' means the succession of a recognized stock exchange, being a body of individuals or a society registered under the Societies Registration Act, 1860, by another stock exchange, being a Company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities carried on by such individuals or society 'Demutualisation' means the segregation of ownership and management from the trading rights of the members of a recognized stock exchange in accordance with a scheme approved by the SEBI.

Steps for Corporatisation and Demutualization [Section 4B - Securities Contracts Regulations) Act, 1956]

In accordance with the provisions of the Securities Contracts (Regulation) Act, 1956, as contained in Section 4B:

- (1) All recognized stock exchanges referred to in Section .4A shall, within such time as may be specified by the SEBI submit a scheme for corporatisation and demutualization for its approval.

- (2) On receipt of the scheme, the SEBI may, after making such enquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade and also in the public interest, approve the scheme with or without modification.
- (3) No scheme shall be approved by the SEBI if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognized stock exchange or payment of dividends to members have been proposed out of any reserves or assets of that stock exchange.
- (4) Where the scheme is approved, the scheme so approved shall be published immediately by-
 - (a) The SEBI in the Official Gazette
 - (b) The recognised Stock Exchange in such two daily newspapers circulating in India, as may be specified by the SEBI, and upon such publication, notwithstanding anything to the contrary contained in this Act or any other law for the time being in force or any agreement, award, judgment, decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognized stock exchange and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognized stock exchange or its members.
- (1) Where the SEBI is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme, it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette. SEBI shall give a reasonable opportunity of being heard to all the persons concerned and the recognized stock exchange concerned before passing an order rejecting the scheme.
- (2) SEBI may, while approving the scheme by an order in writing, restrict -
 - (3) the voting rights of the shareholders who are stock brokers of the recognized stock exchange.
 - (3) the right of shareholders or a stock broker of the recognized stock exchange to appoint the representatives on the governing board or the stock exchange.
 - (4) The order made by SEBI shall be published in the Official Gazette and on the publication thereof, the order, notwithstanding anything to the contrary contained in the Companies Act, 1956, or any other law for the time being in force, have full effect.
 - (5) Every recognized stock exchange, in respect of which the scheme for corporatisation or demutualization has been approved shall either by fresh

issue of equity shares to the public or in any other manner as may be specified by the regulations made by SEBI, ensure that at least 51% of its equity share capital is held, within 12 months from the date of publication of the order by the public other than shareholders having trading rights. The SEBI may, on sufficient cause being shown to it and in the public interest, extend the said period by another 12 months.

- (ii) **Title to dividends:** Section 27(1) of Securities Contracts (Regulation) Act, 1956 provides that a holder of security can legally receive and retain any dividend declared by the company even if he has transferred the security for valuable consideration. However, he (i.e. holder of security who is a transferor) cannot receive or retain the dividend if the transfer deed with all other documents required for transfer are lodged with the company within 15 days of the date on which the dividend became due.

The period of 15 days shall be extended as follows: - (1) In case of death of the transferee by the actual period taken by his legal representative to establish his claim to the dividend. (2) In case of loss of the transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof and (3) In case of delay in the lodging of any security and other documents relating to the transfer due to causes connected with the post, by the actual period of delay (Explanation to Section 27(1) of SCRA).

In view of the above, Mr. Patel is entitled to retain the dividend received by him if the transferee, Mr. Mehta has not lodged the transfer deed with the company within 15 days of the date on which the dividend became due or the extended period as per explanation to Section 27(1).

However, Section 27(1) will not affect the right of the transferee to enforce his rights, if any against the transferor or any other person, if the company refuses to register the transfer of security in the name of the transferee.

21. (i) As per Section 8 of Foreign Exchange Management Act, 1999 where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by Reserve Bank of India.

But as per section 9(e) of the said Act, this provision shall not apply to foreign exchange acquired from employment, business trade, vocation, service honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank of India may specify.

The Reserve Bank of India has specified the following persons with the limits for possession and retention of foreign currency by a person resident in India:

Any person may possess foreign coins without any restriction to the amount.

Any person resident in India is permitted to retain in aggregate foreign currency not exceeding USD 2,000 or its equivalent in the form of currency notes/bank notes or travellers cheques acquired by him;

Any person resident in India but not permanently resident therein is permitted to hold the foreign currency without limit, if the foreign currency was acquired when he was resident outside India and was brought into India and declared to the custom authorities.

In the given case as Mr. Raman earned a sum of USD 3000 as a honorarium when he was in employment in Japan. But in view of the restrictions under FEMA and the aforesaid regulation he can retain foreign exchange up to USD 2000 only and not more than that.

- (ii) 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] 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 in 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 transaction 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.

22. (i) In accordance with the provisions of the Competition Act, 2002 as contained in Section 12, the Chairperson and other Members shall not, for a period of two years from the date on which they ceased to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as declined in section 617 of the Companies Act, 1956 (1 of 1956).

Based on the above provisions of the Competition Act, 2002, Mr. MKP will not be able to accept the offer of HLL Ltd. for two years from the date of his cessation as a

member of the Competition Commission since in a case of the said company, it was a party to the proceedings before the Commission.

However, since Life Insurance Corporation of India is a Corporation established under the Central Act, the above restriction does not apply and Mr. MKP can accept the offer to join as the Executive Director of the said corporation with effect from 1st April, 2007.

(ii) Abuse of Dominant position:

The Competition commission while inquiring whether the enterprise ABC company enjoys a dominant position or not under Section 4 of the Competition Act, 2002 will take the following factors into account:

- (a) Market-share of the enterprise
- (b) Size and resources of the enterprise
- (c) Size and importance of the competitors.
- (d) Economic power of the enterprise including commercial advantages over competitors.
- (e) Vertical integration of the enterprises or sale or service net work of such enterprises.
- (f) Dependence of consumers on the enterprise.
- (g) Monopoly or dominant position whether acquired as result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise.
- (h) Entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or services for consumers.
- (i) Countervailing buying power.
- (j) Market structure and size of market.
- (k) Social obligations and size of market.
- (l) Relative advantage, by way of contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition.
- (m) Any other factor which the commission may consider relevant for the inquiry.

23. (i) (A) Illustrations: Illustrations form a part of the statute and considered to be of relevance and value in construing the text of the section. However, illustration can not have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section.

- (B) **Explanation:** An Explanation may be added to include something or to exclude something from it. Explanation should normally be read as to harmonise with and clear up any ambiguity in the main section. It should be construed as to widen the ambit of the section

(ii) **Rule of *Ejusdem Generis***

The term *ejusdem generic* means of the same kind or species. Simply stated the rule means where any Act enumerates different subjects, general words following specific words are to be construed with reference to the words that precede them. The general words are to be taken as applying to things of the same kind as the specific words previously mentioned unless there is something to show that a wider sense was intended. Thus the rule of '*ejusdem generis*' means that where specific words are used and after these specific words, some general words are used, the general words would take their colour from the specific words used earlier (eg) where an Act permitted keeping of dogs, cats, cows, buffaloes and other animals, the expression 'other animals' would not include wide animals like lions and tigers, but would only mean domesticated animals like horses, etc.

However, there are certain cases/circumstances on which this rule cannot be applied in the interpretation of statutes. The general principle of '*ejusdem generis*' applies only where the specific words are all of the same nature. When they are of different categories, then the meaning of general words following these specific words remain unaffected. These general words would not take colour from the earlier specific words.

Again if the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus.

Further, the Courts have a discretion whether to apply the '*ejusdem generis*' doctrine in a particular case or not. For instance, the 'just and equitable' clause in the winding up, powers of the Court is held to be not restricted by the first five situations in which the Court may wind up a Company.

24. (i) Union Bank of India being a nationalized bank is a banking company within the meaning of the Banking Regulation Act, 1949. As per provisions of Section 9 thereof, no banking company shall hold any immovable property, howsoever acquired, for a period exceeding seven years except:
- (i) If such property is required for banking company's own use.
 - (ii) If the Reserve Bank of India extends the said period of seven years by up to another five years on the ground that such extension would be in the interest of the depositors of the banking company.

Accordingly, Union Bank of India in this case would normally be required to dispose off the building acquired from Mr. Rahul before 1st January, 2009. However, if the Reserve Bank of India on above stated ground grants the extension, then also the

said Bank will have to dispose off the same before 1st January, 2014. But in no case, Union Bank of India can hold it permanently because the building is not for bank's own use.

(ii) **Asset Reconstruction:**

'Asset Reconstruction' means acquisition by any securitization company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realization of such financial assistance. [Section 2(b) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002].

Financial Assets

Financial Assets' means debt or receivables and includes:

A claim to any debt or receivables or part thereof, whether secured or unsecured; or any debt or receivables secured by mortgage of, or charge on, immovable property; or a mortgage, charge, hypothecation or pledge of movable property; or

Any right or interest in the security, whether full or part underlying such debt or receivables; or

Any beneficial interest in property, whether movable or immovable or in such debt, receivables, whether such interest is existing, future accruing, conditional or contingent; or

Any financial assistance. [Section 2(1)].

25. Sections 43 – 47 deals with provision relating to Special Courts. Section 43 empowers the Central Government (in consultation with the Chief Justice of the High Court) for trial of offence of money laundering, to notify one or more Courts of Sessions as Special Court of Special Courts for such area or areas or for such cases as may be prescribed in the notification to this effect. Section 44 clearly provides for the offences triable by Special Courts. It overrides the provisions of the Code of Criminal Procedure, 1973 and provides that –

- (i) the schedule offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed;
- (ii) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial. The requirement of police report of the facts which constitute an offence under this Act is no more applicable.

Section 45 provides that the offences under the Act shall be cognizable and non-bailable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person

accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-

- (i) The Public Prosecutor has been given an opportunity to oppose the application for such release and
- (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm person, the Special Court can direct the release of such person on bail.