

EXECUTIVE PROGRAMME

DECEMBER 2010

COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer **SIX** questions including Question No. 1 which is **COMPULSORY**.

2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

Question 1

Comment on any four of the following :

- (i) *It is not necessary to have the minutes of the meeting confirmed in the next meeting.*
- (ii) *Postal ballot mechanism improves shareholders' participation in corporate decision-making.*
- (iii) *Redeemable preference shares are not preference shares.*
- (iv) *Directors ought not misuse the trust entrusted on them.*
- (v) *The terms 'winding-up' and 'dissolution' are not one and the same thing.*

(5 marks each)

Answer 1(i)

Section 193 of the Companies Act, 1956 provides that -

Each page of every minute book shall be initialed or signed and the last page of the record of proceedings of each meeting in such books shall be dated and signed -

- (a) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting ;
- (b) in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

It was held in the case of [*Chetkar Jha & Viswanath Prasad Verma and Ors.* (1971 (1) SCR 586)] that when the minutes of a meeting are placed before the next meeting, the only thing that can be done is to see whether the decision taken at the earlier meeting has been properly recorded or not. The accuracy of the minutes and not the validity of the decision are considered at the meeting. Once a decision is duly taken, it can only be changed by a substantive resolution properly adopted for such a change.

Therefore, in view of the above, it is not necessary to have the minutes of the meeting confirmed in the next meeting.

Answer 1(ii)

Section 192A of the Companies Act, 1956 contains provisions regarding passing of resolution by postal ballot. Postal ballot mechanism improves shareholders' participation in corporate decision-making. It enables members to exercise their voting right sitting at home through postal ballot which they might not have otherwise done because of their inability to attend meetings or to appoint proxies.

Members of a listed company are widely dispersed and there is very poor attendance at general meetings. The meetings are normally attended by promoters, their friends and associates who collect proxies and by and large, resolutions are passed unanimously and without any dissent. Most of the public shareholders are only interested in capital appreciation of their shares and are not interested in attending general meetings. Further, general meetings are required to be held during working hours and shareholders find it difficult to attend meetings.

In view of the provisions made in this section, it would now be possible for all the shareholders of a listed company to exercise their right to vote in case of important resolutions.

Answer 1(iii)

Section 85(1) of the Companies Act, 1956 defines a preference share as that part of share capital which fulfils both the following requirements:

- (i) it carries a preferential right of fixed rate of dividend,
- (ii) it carries a preferential right to be repaid the amount of the capital paid-up or deemed to have been paid-up in winding up or repayment of capital.

A redeemable preference share is a preference share which a company reserved the right to redeem, either out of profits or out of the proceeds of a further issue of shares. It may or may not have a fixed redemption date. The rights of preference shareholders are set out in the memorandum or articles.

Therefore, in view of the above, redeemable preference shares are preference shares.

Answer 1(iv)

Directors of the company are to some extent, trustees for the properties of the company and of the rights which are conferred on them by law and conventions. "A trustee is a person who is the owner of the property, deals with it as principal, as owner and a master, subject only to an equitable obligation to account to some person to whom he stands in relation of trustee" [*Smith v. Anderson* (1880) 15 Ch. D. 247]. Directors stand in fiduciary position towards the company in regard to the powers conferred on them by the Companies Act and by the articles of the company and also with regard to the funds of the company, which are under their control.

Therefore, the directors ought not to misuse the trust entrusted on them.

Answer 1(v)

The terms 'winding up' and 'dissolution' are not one and the same thing. The main points of differences between them are given below:

1. The entire procedure for bringing about a lawful end to the life of a company is divided into two stages – 'winding up' and 'dissolution'. Winding up is the first

stage in the process whereby assets are realised, liabilities are paid off and the surplus, if any, distributed among its members. Dissolution is the final stage whereby the existence of the company is withdrawn by the law.

2. The liquidator appointed by the company or the Court carries out the winding up proceedings but the order for dissolution can be passed by the Court only.
3. According to the Companies Act the liquidator can represent the company in the process of winding up. This can be done till the order of dissolution is passed by the Court. Once the Court passes dissolution orders the liquidator can no longer represent the company.
4. Creditors can prove their debts in the winding up but not on the dissolution of the company.
5. Winding up in all cases does not culminate in dissolution. Even after paying all the creditors there may still be a surplus; company may earn profits during the course of beneficial winding up; there may be a scheme of compromise with creditors while company is in winding up and in all such events the company may in all probability come out of winding up and hand over back to shareholders/ old management. Dissolution is an act which puts an end to the life of the company.

Question 2

(a) Choose the most appropriate answer from the given options in respect of the following :

- (i) The amount of dividend declared will have to be deposited in a separate bank account within —
 - (a) 5 Days from the date of declaration of dividend
 - (b) 7 Days from the date of declaration of dividend
 - (c) 15 Days from the date of declaration of dividend
 - (d) 21 Days from the date of declaration of dividend.
- (ii) No person can hold office of a director in more than —
 - (a) 10 Public companies at a time
 - (b) 15 Public companies at a time
 - (c) 20 Public companies at a time
 - (d) 50 Public companies at a time.
- (iii) DIN will be allotted by the Central Government within —
 - (a) 1 Month from the receipt of application for the same
 - (b) 3 Months from the receipt of application for the same
 - (c) 6 Months from the receipt of application for the same
 - (d) 12 Months from the receipt of application for the same.
- (iv) After completion of buy-back operation, the securities must be extinguished and physically destroyed within —
 - (a) 30 Days

- (b) 15 Days
 - (c) 7 Days
 - (d) 21 Days.
- (v) Under Section 224(1), an auditor is appointed for a particular period —
- (a) From the date of appointment till another auditor is appointed
 - (b) From the conclusion of one AGM until the conclusion of next AGM
 - (c) From the date of appointment till the auditor resigns
 - (d) None of the above.
- (vi) Under Section 75, whenever a company having a share capital makes any allotment of shares, it must file a return of allotment with the Registrar of Companies within —
- (a) 7 Days
 - (b) 15 Days
 - (c) 30 Days
 - (d) 60 Days.
- (vii) Certified copy of the special resolutions passed in the meeting will have to be filed with the Registrar of Companies within —
- (a) 30 Days
 - (b) 60 Days
 - (c) 15 Days
 - (d) 7 Days.
- (viii) Section 149(1) provides that in case of a public company, borrowing powers are not exercisable until the company is entitled to —
- (a) Commence business
 - (b) Incorporate business
 - (c) Start business
 - (d) None of the above.
- (1 mark each)
- (b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :
- (i) Small deposit holders are those who have deposited in a financial year a sum not exceeding Rs. _____ in a public company.
 - (ii) If the proposed dividend exceeds 15% but does not exceed 20% of the paid-up capital, the amount to be transferred to reserves will not be less than _____ % of the current profit.
 - (iii) Resignation of a director is effective from the date it was _____.
 - (iv) Under section 285, there should be at least _____ meetings of the Board of directors in a year.
 - (v) An audit firm having 3 partners not in full time employment anywhere may* be appointed as auditor in maximum _____ public companies.
 - (vi) Section 260 provides for the appointment of _____.

- (vii) A director of 10 companies will require _____ number(s) of DIN.
- (viii) In terms of Section 383A, it is necessary to appoint a Whole-time Secretary in a company having a paid-up capital of Rs. _____. (1 mark each)

Answer 2(a)

- (i) (a) 5 days from the date of declaration of dividend.
- (ii) (b) 15 Public companies at a time.
- (iii) (a) 1 month from the receipt of application for the same.
- (iv) (c) 7 days
- (v) (b) From the conclusion of one AGM until the conclusion of next AGM
- (vi) (c) 30 days
- (vii) (a) 30 days
- (viii) (a) Commence business

Answer 2(b)

- (i) Small deposit holders are those who have deposited in a financial year a sum not exceeding **Rs. 20,000** in a public company.
- (ii) If the proposed dividend exceeds 15% but does not exceed 20% of the paid-up capital, the amount to be transferred to reserves will not be less than **7.5%** of the current profit.
- (iii) Resignation of a director is effective from the date it was **tendered**.
- (iv) Under Section 285, there should be at least **four** meetings of the Board of directors in a year.
- (v) An audit firm having 3 partners not in full time employment anywhere may* be appointed as auditor in maximum **60** public companies.
- (vi) Section 260 provides for the appointment of **additional directors**.
- (vii) A director of 10 companies will require **one** number(s) of DIN.
- (viii) In terms of Section 383A, it is necessary to appoint a Whole-time Secretary in a company having a paid-up capital of **Rs. 5 crore or more**.

Question 3

- (a) Explain when a person ceases to be a member of the company. (8 marks)
- (b) Enumerate the disqualifications of a director mentioned in Section 274. (8 marks)

Answer 3(a)

A person ceases to be a member of a company when his name is removed from its register of members, which may occur in any of the following situations:

- (a) he transfers his shares to another person, the transfer is registered by the company and his name is removed from the register of members;

- (b) his shares are forfeited;
- (c) his shares are sold by the company to enforce a lien;
- (d) he dies; (his estate, however, remains liable for calls);
- (e) he is adjudged insolvent and the Official Assignee disclaims his shares;
- (f) his redeemable preference shares are redeemed;
- (g) he rescinds the contract of membership on the ground of fraud or misrepresentation or a genuine mistake;
- (h) his shares are purchased either by another member or by the company itself under an order of the Court under Section 402 of the Companies Act;
- (i) the member is a company which is being wound-up in India, and the liquidator disclaims the shares;
- (j) the company is wound up.

Though one ceases to be a member, he remains liable as a contributory and is also entitled to share in the surplus, if any.

Answer 3(b)

The Companies Act, 1956 does not lay down any qualifications for a person to be appointed as a director of a company. However, it mentions disqualifications of directors, which are contained in Section 274 of the Act.

Section 274 lays down: “

- (1) A person shall not be capable of being appointed director of a company, if—
 - (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
 - (b) he is an un-discharged insolvent;
 - (c) he has applied to be adjudicated as an insolvent and his application is pending;
 - (d) he has been convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence;
 - (e) he has not paid any call in respect of the shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
 - (f) an order disqualifying him for appointment as director has been passed by Court in pursuance of Section 203 and is in force unless the leave of the Court has been obtained for his appointment in pursuance of that section;
- or

- (g) such person is already a director of a public company which, -
 - (a) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after first day of April 1999; or
 - (b) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more:

Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company, in which he is a director, failed to file annual accounts and annual returns under sub-clause (a) or has failed to repay its deposit or interest or redeem its debentures on due date or pay dividend referred to in sub-clause (b).

- (2) the Central Government may, by notification in the Official Gazette, remove—
 - (a) the disqualification incurred by any person in virtue of clause (d) of Sub-section (1), either generally or in relation to any company or companies specified in the notification; or
 - (b) the disqualification incurred by any person in virtue of clause (e) of Sub-section (1)
- (3) A private company which is not a subsidiary of a public company may, by its articles, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified in Sub-section (1)”

Question 4

Write notes on any four of the following :

- (i) *Liability clause in memorandum of association*
 - (ii) *Cases in which prospectus is not required to be issued*
 - (iii) *Investor education and protection fund*
 - (iv) *Procedure for striking off the name of a company*
 - (v) *Digital signature certificate.*
- (4 marks each)*

Answer 4(i)

Liability clause in memorandum of association

The fourth compulsory clause of memorandum of association must state that liability of the members is limited, if it is so intended that the company be limited by shares or by guarantee. The effect of this clause is that in a company limited by shares, no member can be called upon to pay more than what remains unpaid. For example, where a shareholder holding a share of Rs.100 has paid Rs.75 on it, he can be called upon to pay the balance of Rs.25. In case, he has paid the full value of Rs.100, he will not be required to pay anything more even if the company owes huge debts to its creditors.

In a company limited by guarantee, the liability clause will state the amount which each member should undertake to contribute to the assets of the company in the event

of liquidation of the company. He cannot be called upon to pay any thing before the company goes into liquidation.

Answer 4(ii)**Cases in which prospectus is not required to be issued**

In the following cases although the shares are offered and application forms issued, a prospectus containing all the details required under Section 56 is not necessary:

- (i) Where a person is a bona fide invitee to enter into an underwriting agreement with regard to shares or debentures; [Section 56(3)].
- (ii) where the shares or debentures are not offered to public; [Section 56(3)].
- (iii) where the issue relates to shares or debentures uniform in all respects, with the shares or debentures already issued and dealt in or quoted at a recognised stock exchange; [Section 56(5)].
- (iv) where the shares or debentures are offered to the existing holders of shares or debentures respectively; [Section 56(5)].
- (v) where any prospectus is published as a newspaper advertisement ordinarily called prospectus announcement, it shall not be necessary to specify the contents of the memorandum, or the names etc. of the signatories to the memorandum, or the number of shares subscribed for by them (Section 66). However, the guidelines issued by SEBI as to the code of advertisement must be adhered to.

Answer 4(iii)**Investor education and protection fund**

As per Section 205C of the Companies Act, 1956, the Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter referred to as the "Fund").

There shall be credited to the Fund the following amounts, namely:

- (a) amounts in the unpaid dividend accounts of companies;
- (b) the application moneys received by companies for allotment of any securities and due for refund;
- (c) matured deposits with companies;
- (d) matured debentures with companies;
- (e) the interest accrued on the account referred to in clauses (a) to (d);
- (f) grants and donations given to the Fund by the Central Government, State Government, companies or any other institutions for the purposes of the Fund; and
- (g) the interest or other income received out of the investments made from the Fund.

However, no such amounts as mentioned in (a) to (d) above shall form part of the fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.

Answer 4(iv)

Procedure for striking off the name of a company

The striking off a company may be effected by following two ways:

(A) Striking-off by Registrar of his own motion

Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation. If the company does not reciprocate, the Registrar may proceed in this regard to strike the company off the register of companies and publish a notice in this regard in the Official Gazette.

(B) Striking-off on company's application

The Registrar can exercise the power conferred on him under Section 560 of the Companies Act, 1956 when an application is received by him from the company for striking it off on the ground that it is a defunct company, i.e. it is not carrying on business or in operation. After the receipt of application from the company, the Registrar may proceed to strike its name off the register, and shall publish notice thereof in the Official Gazette.

Answer 4(v)

Digital signature certificate

Digital Signature Certificates (DSC) are the digital equivalent (that is electronic format) of physical or paper certificates. Examples of physical certificates are drivers' licenses, passports or membership cards. Certificates serve as proof of identity of an individual for a certain purpose; for example, a driver's license identifies someone who can legally drive in a particular country. Likewise, a digital certificate can be presented electronically to prove one's identity, to access information or services on the Internet or to sign certain documents digitally.

Under the MCA 21 system, the following four types of users are identified as users of Digital Signatures and are required to obtain digital signature certificate:

1. MCA (Government) Employees.
2. Professionals, (company secretaries, Chartered Accountants, Cost Accountants and Lawyers) who interact with MCA and companies in the context of Companies Act.
3. Authorised signatories of the company including managing director, directors, manager or secretary.
4. Representatives of Banks and Financial institutions.

A person requiring a Digital signature certificate can approach any of the certifying authorities identified by the MCA for issuance of Digital signature certificate.

Question 5

- (a) *What are the consequences of non-registration of a charge which requires registration under Section 125 ?* (5 marks)
- (b) *“The power to borrow includes the power to give security.” Comment. ‘* (5 marks)
- (c) *What are the rights, powers and disabilities of debenture trustees ?* (6 marks)

Answer 5(a)

If a charge which requires registration under Section 125 of the Companies Act, 1956 is not registered as per Sub-section (1) of Section 125, the consequences are as follows:

- (a) The charge will be void as against the liquidator (if the company goes into liquidation) and against creditors, but against them only.
- (b) The charge is good against the company and the amount becomes payable immediately.
- (c) Until liquidation, the person seeking to enforce such a charge, has available to him all remedies of a mortgage against the company, though not against other creditors.
- (d) The company may give a subsequent valid mortgage to secure the same debt. But if a subsequent creditor, even with notice of the first charge, takes a registered charge before the first said charge is registered, he obtains priority.
- (e) During liquidation the charge-holder (creditor) assumes the status of an unsecured creditor, as the charge is void against liquidator and creditors.
- (f) The holder of an equitable charge whose charge is void on the ground of non-registration, has no lien on the title deeds or documents deposited with him as the deposit is only ancillary to the void charge.
- (g) Although a security becomes void by non-registration, it does not affect the contract or obligation of the company to repay the money thereby secured. In fact, Section 125 provides that where a charge becomes void by non-registration, the money becomes immediately payable and the company cannot repudiate it on the ground of non-registration.
- (h) Omission to register particulars of charges as required is punishable with fine. The company and every officer of the company or other person who is in default shall be punishable with fine which may extend to five thousand rupees for everyday during which the default continues. A further fine of Rs. 10,000 may be imposed on the company and every officer of the company for other defaults relating to the registration of charges (Section 142).

Answer 5(b)

The power to borrow money, whether express or implied, includes the power to charge the assets of the Company as security to the lender. A company, like an individual,

may have to borrow for the exigencies of its business. The power of a company to borrow money is implied in the case of all trading companies. [*General Auction Estate Co. v. Swith* (1891) Ch 432]. Non-trading companies, however, must be expressly authorised to borrow by their memorandum.

In practice, all types of companies, trading and non-trading, are given express power to borrow by their articles which can fix up the maximum amount which can be borrowed and give security. A power to borrow money, whether express or implied, includes the power to charge the assets of the company as security to the lender.

A company, like a natural person, can give security. Normally, the debentures and other borrowings of the company are secured by a charge on the assets of the company. Where property, both existing and future, is agreed to be made available as a security for the repayment of debt and creditors have a present right to have it made available, there is a charge.

Answer 5(c)

The rights, powers and disabilities of debenture trustees are discussed as below:

Rights of debenture trustee

1. The right to have the possession of the instrument of trust and the title deed relating to trust property.
2. The right to be reimbursed of all costs expenses and liabilities incurred in administration of the trust.
3. When a trustee properly completes his duties is entitled to get a discharge to the effect in writing.
4. A trustee has a general right to do all necessary acts (i) for preservation and protection of the trust property and (ii) to protect the interest of a beneficiary who is not competent to contract but he cannot give on lease any trust property for more than twenty one years without the permission of a court.

Powers of debenture trustee

1. He can sell the trust property where instrument of the trust so empowers him.
2. A trustee has a power to vary investments.
3. A trustee has a power to apply the trust property for maintenance of property as provided in the instrument of trust.
4. In case of death of one of the trustees the other trustees have a right to act unless contrary intention appears from the instrument of trust.

Disabilities of debenture trustees

1. A trustee who once accepted the trust cannot renounce it except –
 - (i) with the permission of the court
 - (ii) with the consent of the beneficiaries who are competent to contract
 - (iii) by virtue of a special power in the instrument of the trust.

2. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger except in the following cases-
 - (i) when the instrument of the trust so provides
 - (ii) when such a delegation is in the regular course of business
 - (iii) when such a delegation is necessary, and
 - (iv) the beneficiary being competent to contract consents to such a delegation.
3. The trustees cannot exercise their discretionary powers arbitrarily.
4. The trustee and the co-trustee may not lend the trust amount to themselves.

Question 6

- (a) *What are the important rules relating to forfeiture of shares ?* (8 marks)
- (b) *What are the benefits of 'depository system' ?* (8 marks)

Answer 6(a)

The following rules may be noted in connection with forfeiture of shares:

1. *Articles to authorize for forfeiture of shares* – The Companies Act, 1956 do not contain any provision in regard to forfeiture of shares. However, if the articles authorize, shares can be forfeited for non-payment of any call. A company may also adopt Table A of Schedule I of the Companies Act, 1956. As per Regulation 29 of Table A, shares can be forfeited only against non-payment of any call, or installments of a call. The articles of a company may, however, lawfully incorporate any other grounds of forfeiture [*Shah J. in Naresh Chandra Sanyal v. Calcutta Stock Exchange Assn.Ltd.* AIR 1971 SC 422].
2. *Proper Notice* – Before the shares of a member are forfeited, a proper notice to that effect must have been served. Regulation 30 of Table A provides that a notice requiring payment of the amount due together with any interest accrued must mention a further day (not less than 14 days from the date of service of the notice) on or before which the payment is to be made. The notice must also mention that in the event of non-payment, the shares will be liable to be forfeited.
3. *Resolution for forfeiture* – Articles 31 of the Table A provides that if the defaulting shareholder does not pay the amount within the specified time as required by the notice, the directors may pass a resolution forfeiting the shares.
4. *Power of forfeiture must be exercised bonafide and for the benefit of the company*– The power to forfeit must be exercised for the benefit of the company. The power must be used to force reluctant shareholders to pay the unpaid call money. The power of forfeiture cannot be exercised to relieve unwilling shareholders from the liability of making the payment. Such a shareholder continues to be responsible for the unpaid part of the shares.
5. *Consequences of forfeiture of shares* – As per Article 33 of Table A, person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares. However, he shall remain liable to pay to the company all

moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares. The liability of such person shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

Answer 6(b)

The benefits from the depository system are as follows :

- (a) It reduces the cost of issue of securities by eliminating stamp duty.
- (b) It reduces the scope for theft, forgery and damage to security certificates.
- (c) It eliminates bad deliveries.
- (d) It entitles the transferee to all the rights associated with the securities immediately on settlement of purchase transaction.
- (e) It enhances the velocity of the securities in circulation and hence liquidity in the market. The investors can trade in securities immediately on allotment without waiting for receipt of security certificates.
- (f) It makes faster disbursement of non cash corporate benefits like bonus issue possible.
- (g) It eliminates problems relating to change of address of investor, transmission of shares etc.
- (h) It eliminates problems relating to selling securities on behalf of a minor.

Question 7

- (a) *Money Ltd. desires to reduce its paid-up capital by purchasing from some select shareholders holding shares constituting 20% of its paid-up capital. Can it do so? Discuss. (8 marks)*
- (b) *Abhay Ltd. committed default by failing to file balance sheet and profit and loss account. Proceedings have been initiated against a non-executive director. However, he contended that he had resigned before the date of default. Whether the contention of the ex-director can be taken into account ? Give reasons. (4 marks)*
- (c) *A demerger scheme was approved by the shareholders, secured and unsecured creditors. The scheme was neither in violation of any law nor against public interest. However, Accounting Standard-14 was not adopted. Whether the scheme can be sanctioned ? Explain. (4 marks)*

Answer 7(a)

Money Ltd. can reduce its paid-up capital by purchasing from some select shareholders holding shares constituting 20% of its paid-up capital provided it complies with the provisions of Section 77A of the Companies Act, 1956 which is briefly summarized as below:-

- (1) The buy-back is authorized by its articles.
- (2) A special resolution has been passed in general meeting of the company authorizing the buy-back.

- (3) The buy-back is or less than twenty-five percent of the total paid-up capital and free reserves of the company. However, the buy-back of equity shares in any financial year shall not exceed twenty-five percent of its total paid-up equity capital in that financial year.
- (4) The ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buy-back. However, the Central Government may prescribe a higher amount for certain class of companies.
- (5) All the shares or other specified securities for buy-back are fully paid-up.
- (6) Every buy-back shall be completed within twelve months from the date of passing the special resolution or a resolution passed by the board under clause (b) of Sub-section (2) of Section 77A.

Besides, fulfilling the above conditions, Money Ltd. cannot buy-back from some select shareholders except as mentioned in Sub-section (5) of Section 77A of the Companies Act, 1956 which is given as below :

- (a) from the existing security holders on a proportionate basis; or
- (b) from the open market; or
- (c) from odd lots, that is to say, where the lot of securities of a public company whose shares are listed on a recognized stock exchange, is smaller than such marketable lot, as may be specified by the stock exchange; or
- (d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

Answer 7(b)

In the case of *Jayesh R More v. State of Gujarat*, (2000) CLC 200 (Guj) that where the director in question had resigned before the default occurred. It was held that he ceased to be a director and had no relationship with the company on the date of the alleged commission of the offence. He did not fall in the definition of an officer in default. The complaint against him was liable to be quashed.

Therefore, in view of the above, contention of the non-executive director that he had resigned before the date of default can be taken into account.

Answer 7(c)

It was held by the Gujrat High Court in the case of *Gallops Realty (P) Ltd., In re v. K.A. Puj*, J. (2010) that Accounting Standard – 14 is applicable only in case of amalgamation and not in case of demerger. Further, the scheme was neither in violation of any law nor against public interest and it was also approved by the shareholders, secured and unsecured creditors.

Therefore, in view of the above, the scheme can be sanctioned.

Question 8

Distinguish between any four of the following :

- (i) 'Subsidiary company' and 'holding company'.

- (ii) *'Rights issue' and 'bonus issue'.*
- (iii) *'Sweat equity' and 'employees' stock purchase scheme'.*
- (iv) *'Trust' and 'agency'.*
- (v) *'Producer company' and 'limited liability partnership'.*

Answer 8(i)

'Subsidiary company' and 'holding company'

Section 4 of the Companies Act, 1956 gives the meaning of holding company and subsidiary company. Accordingly, section 4 of the Act provides that –

A company shall be deemed to be a subsidiary of another (holding company) if, but only if, —

- (a) that other (holding company) controls the composition of its Board of directors;
or
- (b) that other—
 - (i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;
 - (ii) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or]
- (c) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

Illustration

Company B is a subsidiary of company A, and company C is a subsidiary of company B. Company C is a subsidiary of company A, by virtue of clause (c) above. If company D is a subsidiary of company C, company D will be a subsidiary of company B and consequently also of company A, by virtue of clause (c) above, and so on.

So, the difference between a holding company and a subsidiary company has been made very clear by Section 4 of the Companies Act, 1956.

Answer 8(ii)

'Rights issue' and 'bonus issue'

Rights Issue - Section 81 of the Companies Act, 1956 provides for the issue of right share and states that whenever at any time after expiry of two years from the incorporation of the company or after the expiry of one year from the first allotment of shares, whichever is earlier, it is proposed to increase the subscribed capital by allotment of further shares, such shares shall be offered to the existing holders of equity shares in proportion to the capital paid up on their shares at the time of further issue.

Bonus Issue - A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares. The issue of bonus shares by a company is a common feature. When a company is prosperous and accumulates large distributable profits, it converts these accumulated profits into capital and divides the capital among the existing members in proportion to their entitlements. Members do not have to pay any amount for such shares. They are given free.

So, while the purpose of right issue is to increase capital by inviting existing shareholders to subscribe capital, bonus shares are issued to convert accumulated profits into the share capital of the company.

Answer 8(iii)

‘Sweat equity’ and ‘employees’ stock purchase scheme’

Sweat equity shares means equity shares issued by a company to its employees or directors at a discount or for consideration, other than cash for providing know-how or making available right in the nature of intellectual property rights or value additions, by whatever name called.

ESPS or employee stock purchase scheme means a scheme under which the company offers shares to employees as part of a public issue or otherwise. Employees who are promoters or belongs to a group of promoters shall not be eligible to participate in ESPS. Issue of ESPS requires approval of the shareholders of the company by passing special resolution in the general body meeting of the shareholders. ESPS will have lock-in period of minimum one year.

So, sweat equity is issued to employees or directors in recognition of their contribution for providing know how etc. There is no such consideration in case of ESPS. Lock-in-period of one year is provided in case of ESPS whereas the same is 3 years in case of sweat equity. Further, sweat equity shares can be issued to promoters whereas ESPS cannot be issued to promoters.

Answer 8(iv)

‘Trust’ and ‘agency’

The term trust has been defined as (i) an obligation annexed to the ownership of property and (ii) arising out of confidence reposed in and (iii) accepted by the owner or declared accepted by him, (iv) for the benefit of another or of another and the owner.

An agent is an individual, firm or body corporate who has been appointed by an agreement as an agent to do any act for another, or to represent another in dealing with any third person. The relationship is to be determined not by name but by conduct of the parties and the purpose of their dealings.

So, the fundamental differences between Trust and Agency are given below:

- (i) An agent has no title to the property. A trustee is the full owner of the trust property.
- (ii) An agent acts on behalf of the principal. A trustee acts in his own right.
- (iii) An agent is not personally liable, if he acts on behalf of the principle. On the other hand, a trustee is personally liable.

Answer 8(v)**‘Producer company’ and ‘limited liability partnership’**

The main differences between an LLP and a Producer Company are given as below–

		<i>LLP</i>	<i>Producer Company</i>
1.	Membership	Suitable for partnership concerns set up by professionals viz. Chartered Accountants, Company Secretaries etc. Though anybody can join an LLP.	These companies are formed by the manufacturers, producers, etc.
2.	No. of Members	Two or more persons carrying on a lawful business.	Any ten or more individual producer or two or more producer institutions or their combination.
3.	Liability	Limited to the Limited Liability Agreement.	Limited to the amount of unpaid share, held by them.
4.	Directors	Appointment of directors is not required. Organization is run by the designated partners / partners.	Minimum five and maximum fifteen directors.
5.	Shares	Capital contribution as given in the LLP agreement.	The share capital of producer company is divided into equity shares only.
6.	Conversion	May convert to other forms of business.	No conversion clause exists.
7.	Name	The word ‘LLP’ would form part of its name.	The word ‘Producer Company Limited’ would form part of its name.