

PAPER-4 – CORPORATE AND ALLIED LAWS

Question No. 1 is compulsory.

Answer any five from the rest

Question 1

- (a) The Director of Som Limited proposed dividend at 12% on equity shares for the financial year 2015-16. The same was approved in the annual general meeting of the company held on 20th September, 2016. The Directors declared the approved dividends. They seek your opinion on the following matters:
- (i) Mr. Ashok, holding equity shares of face value of ₹10 lakhs has not paid an amount of ₹1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?
 - (ii) Ms. Nini was the holder of 1,000 equity shares on 31st March, 2016, but she has transferred the shares to Mr. Raj, whose name has been registered on 20th May, 2016. Who will be entitled to the above dividend? (4 Marks)
- (b) Seafood Limited, a public limited company was incorporated on 1st April, 2015. The company has conducted four Board meetings during the financial year 2015-16 i.e. on 6th April, 2015, 28th August, 2015, 30th September, 2015 and 30th March, 2016.
- (i) Has the company contravened the provisions of the Companies Act, 2013 in respect of the conduct of the meetings?
 - (ii) Will your answer differ if the company was incorporated under Section 8 of the Companies Act, 2013? (4 Marks)
- (c) RSE Stock Exchange Limited, a recognised stock exchange is involved in trading of shares of Son Limited. The SEBI on receiving a complaint from a group of investors enquired and found that trading of shares of Son Limited is being conducted in a manner detrimental to the interest of the general investors. In order to curb the same, the SEBI wants to issue some directions to RSE Stock Exchange Limited. Referring to the provisions of the Securities Contract (Regulations) Act, 1956, discuss whether the SEBI has power to issue such directions. Can such directions be given to an individual who made some profit in any transaction in contravention of any provision of the Securities Contracts (Regulation) Act, 1956, or regulations made thereunder? (4 Marks)
- (d) Referring to the provisions of the Companies Act, 2013, examine the following:
- (i) XYZ Limited, a listed company has constituted an audit committee consisting of five members out of whom two are independent directors. Subsequently, the company increased the composition of audit committee to six members with three independent directors.

- (ii) *Mr. Intelligent, was appointed as a small shareholder's director of XYZ Limited, which is in the business of Oil refining. Subsequently, A Limited and B Limited have also appointed him as small shareholder's director. Is the appointment valid?*

(4 Marks)

- (e) *Lifesys Limited, a billion dollar, Indian company wishes to create a chair in a reputed university in the U.S. This chair is for the department of computer science. The company wishes to obtain your advise in regard to the following with reference to the FEMA, 1999.*

- (i) *Is such "chair" creation permissible?*
 (ii) *What is the maximum amount that can be denoted for such chair?*
 (iii) *Any formalities to be complied with?*

(4 Marks)

Answer

- (a) (i) The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offense shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. Ashok is holding equity shares of face value of ₹ 10 Lakhs and has not paid an amount of ₹ 1 lakh towards call money on shares. Referring to the above provision, Mr. Ashok is eligible to get ₹ 1.20 lakh towards dividend, out of which an amount of ₹ 1 lakh can be adjusted towards call money due on his shares. ₹ 20,000 can be paid to him in cash or by cheque or in any electronic mode.

According to the above mentioned provision, company can adjust sum of ₹ 1 lakh due towards call money on shares against the dividend amount payable to Mr. Ashok.

- (ii) According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Ms. Nini, the holder of equity shares transferred the shares to Mr. Raj whose name has been registered on 20th May 2016. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2016, so, Mr. Raj will be entitled to the dividend.
- (b) **Board Meeting:** Section 173(1) of the Companies Act, 2013 provides for the holding of the Board meetings. According to the section, every company shall hold the first meeting of the Board of Directors within 30 days of the date of its Incorporation and with respect to the subsequent board meetings, every company shall hold minimum of 4 meetings

every year provided that the gap between two consecutive board meetings shall not be more than 120 days.

However, the Central Government vide its Notification G.S.R. 466(E) dated 5th June 2015, notified that section 173(1) shall apply to the company formed under section 8 of the Companies Act, 2013 only to the extent that the Board of Directors, of such companies shall hold at least one meeting within every six calendar months.

As per the given facts, Seafood Ltd. was incorporated on 1st April, 2015 and conducted four Board meetings during the financial year 2015-16 on 6th April, 2015, 28th August, 2015, 30th September 2015 and 30th March 2016.

Considering the above provisions in the given situations-

- (i) Company has contravened the above provisions of the Companies Act, 2013 in respect of the conduct of the subsequent board meetings. The gap between two consecutive board meetings i.e. the meeting held on 6th April, 2015 and 28th August, 2015 is 143 days which is more than 120 days and similarly the gap between the meeting held on 30th September 2015 and 30th March 2016 is 181 days which is again more than 120 days.
- (ii) In the case of company incorporated under section 8 of the Companies Act, 2013, since the board meetings have been conducted within 6 calendar months, so there is no contravention of the provision related to holding of board meetings.
- (c) Power to issue directions [Section 12A of the Securities Contract (Regulation) Act, 1956]: Where the Securities and Exchange Board of India is satisfied after an inquiry, that it is necessary –
 - (a) in the interest of investors, or orderly development of securities market; or
 - (b) to prevent the affairs of any recognised stock exchange, or, clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market; or
 - (c) to secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause (b),

it may issue such directions, -

- (i) to any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or class of persons associated with the securities market; or
- (ii) to any company whose securities are listed or proposed to be listed in a recognised stock exchange,

as may be appropriate in the interests of investors in securities and the securities market.

Hence, accordingly SEBI may issue such direction to RSE Stock Exchange Ltd.

As per the Explanation given in the section, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

So, accordingly the directions can be given to an individual who had made some profit in any transaction in contravention of any provision of the Securities Contracts (Regulation) Act, 1956.

- (d) (i) **Composition of Audit Committee:** As per Section 177(2) of the Companies Act, 2013, the audit committee shall consist of a minimum of three directors with independent directors forming a majority. In the given instance, XYZ Ltd. a listed company constituted an Audit committee consisting of 5 members out of which 2 are independent directors. Subsequently company increased the composition of audit committee to 6 members with three Independent directors. Thus, according to the above provision the compliance with respect to the composition of audit committee with an independent directors forming a majority is not valid.
- (ii) **Appointment of small shareholder's director:** As per the Rule 7(8) of the *Companies (Appointment and Qualification of Directors) Rules, 2014*, read with section 151 of the Companies Act, 2013 regarding the appointment of small shareholders' director, no person shall hold the position of small shareholders' director in more than 2 companies at the same time. However, the second company in which he has been so appointed shall not be in a business which is competing or is in conflict with the business of the first company.

In the given case, Mr. Intelligent was appointed as a small shareholder's director of XYZ Ltd. Subsequently A Ltd. and B Ltd. have also appointed him as small shareholder's director.

Considering the above provision, appointment of Mr. Intelligent in both A Ltd. and B Ltd. is invalid. However, he can accept appointment in either A Ltd. or B Ltd., subject to the maximum limit of 2 companies provided either A Ltd. or B Ltd. is not having a business which is competing or is in conflict with the business of the XYZ Ltd.

- (e) As per Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, read with section 5 of the Foreign Exchange Management Act, 1999 donations exceeding one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, can be remitted by persons other than individuals for creation of Chairs in reputed educational institutes with the prior approval of the Reserve Bank of India.

Considering the above provision-

- (i) In the first case, "chair" creation for the department of computer science in reputed university in the U.S. is permissible.
- (ii) Maximum amount that can be donated for such chair will be one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less without prior approval of the Reserve Bank of India.
- (iii) In case where donations exceeds one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, it shall require prior approval of Reserve Bank of India.

Question 2

- (a) *Super Real Estate Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013.*

<i>Financial year</i>	<i>Amount (₹ In crores)</i>
2011-12	20
2012-13	40
2013-14	30
2014-15	70
2015-16	50

- (i) Calculate the amount that the company has to spend towards CSR.
 - (ii) Give the composition of the CSR committee of a listed and unlisted company.
 - (iii) Will the company suffer penalties if they fail to provide for or incur expenditure for CSR?
 - (iv) List only two activities that are expressly prohibited from being considered as CSR activities. (8 Marks)
- (b) *The Balance Sheet of Loyal Limited as at 31-03-2016 disclosed the following details:*
- (i) *Authorised share capital- ₹ 400 crore*
 - (ii) *Paid up share capital – ₹ 150 crore*
 - (iii) *Reserve and surpluses- ₹ 750 crore*

The company has issued, in the year 2011, fully convertible debentures of ₹ 100 crores which are due for conversion in the year 2016. The company proposes after the conversion of debentures to issue Bonus Shares in the ratio of 1:1.

Referring to the provisions of the Securities and Exchange Board of India, (Issue of Capital and Disclosure Requirements) Regulations, 2009, explain the provisions with regard to:

- (1) *Authorisation to issue the Bonus shares.*

- (2) *Revision of paid up share capital*
- (3) *Sources of funds*
- (4) *Any other restriction* (8 Marks)

Answer

- (a) Section 135 read with *Companies (Corporate Social Responsibility Policy) Rules, 2014* of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility.

As per the given facts, following are the answers in the given situations-

- (i) Amount that Company has to spend towards CSR:

According to section 135 of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

Accordingly, net profits of Super Real Estate Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2016-2017.

- (ii) Composition of CSR Committee:

- (a) In the case of listed company, the CSR Committee shall consist of three or more directors, out of which at least one director shall be an independent director.
- (b) Whereas in case of an unlisted public company or a private company, is not required to appoint an independent director and shall have its CSR Committee without such director. A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

- (iii) In case of failure to incur expenditure for CSR: If the company fails to provide such amount or incur expenditure for CSR, the Board shall, in its report, under section 134 of the Companies Act, 2013 specify the reasons for not spending the amount.

As no quantum of punishment is given under section 135, section 450 of the Companies Act, 2013 says that, the company and every officer of the company or any other person who is in default or contravenes in compliances with section 135 shall be punishable with fine which may extend to ₹ 10,000. In case of continuation of contravention with further fine extending to ₹ 1000 for every day after the first during which the contravention continues.

(iv) **Activities not to be considered as CSR Activities:** The *Companies (CSR Policy) Rules, 2014* provides for some activities which are not considered as CSR activities:

- (1) The CSR projects or programs or activities undertaken outside India.
- (2) The CSR projects or programs or activities that benefit only the employees of the company and their families.
- (3) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.
- (4) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

(b) **Bonus Issue [Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009]**

Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 contains the regulations (Regulations 92 to 95) for issue of bonus shares. Loyal Ltd. can issue bonus shares in the ratio of 1:1 as follows:

1. **Authorization to issue the Bonus shares:** The Articles of Loyal Ltd. must authorize it to issue the bonus shares and capitalization of reserve. If there is no provision in the Articles authorizing the company, firstly, the Articles shall be amended by passing a special resolution.
2. **Revision of paid up share capital:** Steps for determining whether any increase in authorised share capital is required:
 - (a) Paid up share capital as on 31st March, 2016: ₹ 150 crores.
 - (b) Paid up capital (after conversion of ₹ 100 crores fully convertible debentures, assuming that these debentures shall be converted into share capital of ₹ 100 crores) ₹ 250 crores (150+100).
 - (c) Proposed bonus issue - 1 share for every 1 share held.
 - (d) Post bonus issue capital: ₹ 500 crores (250+250).

Since the Authorised share capital of the company is only ₹ 400 crores, it has to take steps to increase the amount to ₹ 500 crores or beyond by complying with the provisions laid down in the Companies Act.

3. **Sources of funds:** Reserves and surplus (free reserves built out of the genuine profits can be used for issue of bonus issue): ₹ 750 Crores

Since the source of issue of bonus shares (₹ 750 crores) is sufficient to issue bonus shares (₹ 250 crores), the proposed issue can be made.

4. **Other Restriction:** Other restrictions for issue of Bonus shares are as under:

- (a) A resolution shall be passed by the Board in a duly convened Board meeting.

- (b) The bonus issue shall be made within 15 days of passing the Board resolution.
- (c) The bonus issue can be made if there is no default in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal on redemption thereof; and payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus, etc.

Question 3

(a) *Mr. Smart, a technocrat aged 71 years and reputed to be a specialist in reviewing sick companies is being considered to be appointed as Managing Director of Downhill Industries Limited. The company has been incurring losses for the past several years and its "effective capital" is ₹ 500 crores. Referring to the provisions of the Companies Act, 2013, discuss:*

- (i) *Can Mr. Smart be appointed as Managing Director of the company despite being over 70 years of age? If so, what is the process to be followed to enable this?*
- (ii) *What is "effective capital" as per Schedule V of the Act?*
- (iii) *What is the maximum permissible remuneration under the Companies Act, 2013?*

(8 Marks)

(b) *Greater DINA Investors Association made a complaint by an informal letter to the Central Government that Management of Secret Limited has been indulging in fraudulent activities causing loss to the shareholders and that an investigation should be carried out to find out the whole truth. On receipt of the letter, the Central Government directed the Association to approach them formally after complying with the provisions of the Companies Act, 2013. Advise the Association.*

(4 Marks)

(c) *Mr. Arnab, one of the Directors of Aim Insurance Company Limited had taken some life insurance policies from the company. He, now, wants to avail a temporary loan from the company. The company refused to grant such loan on the ground that there is a prohibition in this regard. Mr. Arnab, approached you, now, about the matter. Advise him with reference to the Insurance laws Amendment Act, 2015 as well as Section 185 of the Companies Act, 2013, whether such loan can be obtained by him.*

(4 Marks)

Answer

- (a) (i) **Appointment of Managing Director:** According to section 196(3) of the Companies Act, 2013, no company shall appoint or continue the employment of any person as managing director, whole-time director or manager who is below the age of 21 years or has attained the age of 70 years.

However, a person who has attained the age of seventy years may be appointed to such office by passing of a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.

Hence, Downhill Industries Limited can appoint Mr. Smart aged 71 years as Managing Director of Downhill Industries Limited by passing Special resolution and justifying his appointment in the explanatory statement annexed to the notice for such motion.

- (ii) **Effective Capital as per Schedule V of the Act:** "Effective Capital" means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.
- (iii) **Maximum permissible remuneration:** According to Section II of Part II of Schedule V, where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval pay remuneration to the managerial person not exceeding 60 lakhs plus 0.01% of the effective capital in excess of ₹ 250 crores in case where the effective capital is 250 crores and above.

Hence, the maximum permissible remuneration shall be 60 lakhs plus 0.01% of 250 crore [500 crore - 250 crore]: ₹ 60 Lakhs + 2.5 lakhs is ₹ 62.5 Lakhs.

[Assumption: Mr. Smart reputed to be a specialist in reviewing sick companies is being considered to be appointed as Managing Director of Downhill Industries Limited and the company has been incurring losses for the past several years, it may also be assumed that Downhill Industries Limited is a sick company. So, in that case, the company may pay remuneration upto two times the amount permissible under section II (provided under section III of part II of schedule V)].

- (b) Section 210 of the Companies Act, 2013 provides for Investigation into affairs of company. According to sub-section (1), where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—
 - (a) on the receipt of a report of the Registrar or inspector under section 208;
 - (b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or
 - (c) in public interest,

It may order an investigation into the affairs of the company.

According to section 214,

- (i) The Central Government may before appointing an inspector under Section 210, require the applicant to give a security not exceeding 25,000 rupees for payment of the costs and expenses of investigation as per the criteria given in the *Companies (Inspection, investigation and inquiry) Rules, 2014*.
- (ii) Further, the above referred security shall be refunded to the applicant if the investigation results in prosecution.

As stated in the question that Central Government directing the association to approach them formally after complying with the provision of the Companies Act, 2013 is not required in view of the above stated provisions because Central Government can act in Public interest.

- (c) Section 29 of the Insurance Act, 1938 as amended by the Insurance Laws (Amendment) Act, 2015 provides for the Prohibition of loans. According to this section, no insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life insurance policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner.

The provisions of section 185 of the Companies Act, 2013 shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy.

Accordingly such loan can be obtained by the Mr. Arnab, director of Aim Insurance Company Limited.

Question 4

- (a) *Bengaluru Limited is a listed company with a net worth of ₹ 95 lakhs and turnover of ₹ 11.6 crores as on 31st March, 2016. The company wants to circulate the financial statements in electronic mode. Referring to the provisions of the Companies Act, 2013, advise the company whether it can do so.* (4 Marks)
- (b) *Dull Limited was not running its business since last 2 years. It had no significant accounting transactions during that period. Hence the company had applied and was granted the status of a "dormant Company" by the Registrar of Companies. Now the company has got some opportunity and recently started its operations. Therefore the company is intending to get back the status of an active company and approached you for your advice on the basis of the applicable provisions of the Companies Act, 2013 and appropriate Rule of the Companies (Registration Offices and Fees) Rules, 2014. Also state the power of the Registrar to remove the name of a company from the register of 'dormant company' and treat it as an active company.* (4 Marks)
- (c) *State with reference to the provisions of the Companies Act, 2013, whether the following persons can be appointed as a Director of a company.*

- (i) *Mr. L, who has not paid any calls in respect of any shares of the company held by him and five months have passed from the last day fixed for the payment of calls.*
- (ii) *Mr. G is Director of LDT Limited, who has not filed the company's annual return pertaining to the annual general meeting held in the calendar years 2014, 2015 and 2016.* (4 Marks)
- (d) *The Board of Directors of Shakti Bank Limited, a banking company incorporated in India, for the accounting year ended on 31-03-2016, transferred 15% of its net profit to its reserve fund. Certain shareholders of the company objected to the above act of Board of Directors on the ground that is violative of the provisions of the Banking Regulation Act, 1949. Examine the relevant provisions of the Banking Regulation Act, 1949 to decide whether the contention of shareholder is tenable.* (4 Marks)

Answer

- (a) **Manner of circulation of financial statements in certain cases [Rule 11 of the Companies (Accounts) Rules, 2014]:**
 - (a) In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent-
 - (1) by electronic mode to such members whose shareholding is in dematerialized format and whose email ids are registered with Depository for communication purposes;
 - (2) where Shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode; and
 - (3) by despatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.
 - (b) A listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company.
In the present case, Bengaluru Limited is a listed company, it can circulate the financial statements in electronic mode.
- (b) **Application for seeking status of an active company:** According to the Rule 8 of the Companies (Miscellaneous) Rules, 2014,
 - (a) **Filing of an application:** An application for obtaining the status of an active company shall be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed:

However, the Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive 5 years.

- (b) **Registrar to issue certificate:** The Registrar shall, after considering the application filed for obtaining the status of an active company, issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.
- (c) **Filing of application to obtain status of an active company:** Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form MSC-1 submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within 7 days from such event, file an application for obtaining the status of an active company.
- (d) **Power of Registrar:** Where the Registrar has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.
- (c) (i) According to section 164(1)(f) of the Companies Act, 2013, a person shall not be eligible for appointment as a director of company, if he has not paid any calls in respect of any 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.

In the present case, Mr. L who has not paid any calls in respect of any shares of the company held by him and five months have passed from the last day fixed for the payment of calls. So, Mr. L can be appointed as a Director of a company as only five months have passed from the last day fixed for the payment of calls.

- (ii) According to section 164(2)(a) of the Companies Act, 2013, no person who is or has been a director of a company which has not filed financial statements or annual returns for any continuous period of three financial years. Further, he cannot be appointed in other company for a period of 5 years from the date on which the said company (LDT Ltd.) fails to do so.

In the present case, Mr. G is director of LDT Limited, who has not filed the company's annual return pertaining to the annual general meeting held in the calendar years 2014, 2015 and 2016. It means that the LDT Limited has not filed the annual return for the continuous period of three financial years i.e. 2013-14, 2014-15 and 2015-16. Hence, Mr. G who is a director of LDT Limited cannot be appointed as a Director of a company.

- (d) In accordance with the provisions of the Banking Regulation Act, 1949 as contained in section 17, every banking company incorporated in India must create a reserve fund and transfer a sum equal to not less than 20% of its net profits. However, Central Government is empowered to exempt from this requirement on the recommendation of the Reserve Bank of India. Such exemption will be allowed only:

1. when the amount in the reserve fund and the share premium account are equal to the paid-up share capital of the banking company.
2. When the Central Government feels that its paid-up share capital and reserves are adequate to safeguard the interest of the depositors.

If the banking company appropriates any sum from the Reserve Fund or the Share Premium account, it must be reported to Reserve Bank of India within 21 days explaining the circumstances leading to such appropriation.

Therefore, applying the above provisions, contention of shareholders shall be tenable since the 15% of transfer of profits to Reserve Fund is lower than statutory limits, as provided in the Act.

Question 5

- (a) *The Central Government in the public interest ordered for the amalgamation of ABC Limited and DEF Limited into a single company named KPN Limited through a notification in the official gazette. In this connection the prescribed authority ordered that the equity shareholders of ABC Limited were to be provided with a cash compensation of ₹ 2,000/- and two equity shares in KPN Limited for every single equity share held in ABC Limited. Mr. Ganesh, an equity shareholder of ABC Limited was dissatisfied not only with the amalgamation but also with the compensation offered by the prescribed authority. Advise him whether he can challenge the above amalgamation order of the Central Government. Also advise him within how many days and before which authority he can prefer an appeal against the order of the prescribed authority. Advise him referring to the provisions of the Companies Act, 1956 in this regard.* (6 Marks)
- (b) *Mr. K is making an arrangement to acquire some stock-in-trade from BL Limited for consideration of some furniture lying with him. He is a Director of JS Limited, which is the holding company of BL Limited. Advise him on the basis of provisions of Companies Act, 2013. What will be the position of the arrangement if there is a contravention of the applicable provisions of the Companies Act, 2013?* (6 Marks)
- (c) *The liability of members of Style Limited, a company incorporated in Singapore, is limited. The company plans to start a place of business in Mumbai from 1st Dec., 2016. It has taken an office space in Andheri (West), Mumbai for that purpose. The person who is to take charge of Mumbai Office seeks your advice regarding the provisions of the Companies Act, 2013, in respect of displaying of the company's name etc., at its Mumbai office as well as in its business letters and other documents. Advise him with reference to the provisions of the Companies Act, 2013 governing foreign companies.* (4 Marks)

Answer

- (a) According to section 396 (1) of the Companies Act, 1956 where the Central Government is satisfied that it is essential in public interest that the two public limited companies should amalgamate, the said Government may by order notified in the Official Gazette, provide for the amalgamation of the said two companies into a single company with such constitution; with such property, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

The Central Government has also the power to pass and provide for any consequential incidental and supplementary provisions in connection with the amalgamation including the confirmation by or against the transferee company of any legal proceedings pending by or against any transferor company.

Any member or creditor who is aggrieved by the order of the amalgamation resulting in any financial loss is entitled to compensation which will be assessed by such authority as may be prescribed. Any person aggrieved by the order of compensation can file an appeal to the Company Law Board within 30 days of the publication of the order of compensation.

Hence, Mr. Ganesh can challenge the above amalgamation order of the Central Government. He can file an appeal against the order of compensation to the Company Law Board within 30 days of the publication of the order of compensation.

- (b) Section 192 of the Companies Act, 2013 provides for restriction on non-cash transactions involving directors. According to this section:

- (i) No company shall enter into an arrangement by which—

- (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
- (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected,

unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval shall also be required to be obtained by passing a resolution in general meeting of the holding company.

- (ii) The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

Hence, Mr. K (director of JS Limited, holding company of BL Limited) can follow the above procedure for making an arrangement to acquire some stock-in-trade from BL Limited for consideration of some furniture lying with him.

- (iii) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless-
 - (a) the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
 - (b) any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.
- (c) **Display of names etc. of foreign company:** Section 382 of the Companies Act, 2013 provides that every foreign company shall—
 - (a) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;
 - (b) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, and other official publications of the company; and
 - (c) if the liability of the members of the company is limited, cause notice of that fact—
 - (i) to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
 - (ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

Hence, the person who is to take charge of Mumbai Office of Style Limited may follow the above provisions in respect of displaying of the company's name etc. at its Mumbai office as well as in its business letters and other documents.

Question 6

- (a) *Soft and Secure Lenders Limited, has convened a Board Meeting on 25th October, 2016. One of the items of the agenda is to approve the grant of loan of ₹ 20 crore to Easy Going Industries Limited, for expansion of its business activities. At the Board Meeting, out of the total of six Directors of the lending company, five directors were present and except one director, the remaining four directors approved the grant of loan of ₹ 20 crores to Easy Going Industries Limited. The borrowing company has taken loans from a*

public financial institution and also deposits from public. Examine the loan proposal with reference to the provisions of the Companies Act, 2013. (4 Marks)

- (b) Discuss “Related Party Transactions” under the Companies Act, 2013, with specific reference to the nature of transactions which fall under the purview of the Companies Act, 2013. (4 Marks)*
- (c) GST Limited is a securitization and reconstruction company under SARFAEST Act, 2002. The certificate of registration granted to it was cancelled. State the circumstances when the certificate can be cancelled. Further, state the authority which can cancel the certificate of registration. (4 Marks)*
- (d) Upon an equity made by the Competition Commission of India it was found that Huge Limited is enjoying dominant position in the market and there is every possibility that the company may abuse its dominant position. In order to overcome such a possible situation, the Competition Commission of India wants to order for division of Huge Limited. Referring to the provisions of the Competition Act, 2002, describe the matters which may be provided in the said order. (4 Marks)*

Answer

- (a) **Loan by company:** The given problem is based on the Section 186 of the Companies Act, 2013. According to section 186 (2) of the Companies Act, 2013, no company shall directly or indirectly —
 - (i) give any loan to any person or other body corporate;
 - (ii) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
 - (iii) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.
- Further, Section 186 (5) of the Companies Act, 2013 provides of unanimous resolution that is required for grant of loan to the borrowing company. Any investment shall be made or loan or guarantee or security given by the company only after when the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting.
- Facts in the given problem states that Soft and Secure Lenders Limited convened a board meeting and was to approve grant of loan of ₹ 20 Crore to Easy Going Industries Limited. However, at the Board meeting, out of the total of six directors of the Soft and Secure Lenders Ltd., five directors were present and except one director, the remaining four directors approved the grant of the loan of ₹ 20 Crore.

Considering the above mentioned provisions, since the approval for the grant of loan has not been sanctioned by passing of resolution at a meeting of the Board with the consent of all the directors present at the meeting, so loan proposal is not in compliance with the Companies Act, 2013.

- (b) **Related party transactions:** Section 188 of the Companies Act, 2013 provides for related party transactions. According to this section, following are the nature of transactions covered under the purview of the Companies Act, 2013 -

On the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions prescribed in *the Companies (Meetings of Board and its Powers) Rules, 2014*, company shall enter into any contract or arrangement with a related party with respect to —

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- (g) underwriting the subscription of any securities or derivatives thereof, of the company:

However, where in above transactions, limits as prescribed in *Companies (Meetings of Board and its Powers) Rules, 2014* is exceeding, there in such case a company shall enter into a transaction/transactions only on the prior approval of the company by a resolution. [First proviso to section 188(1)]

Explanation.— It is hereby clarified that the limits specified in *Companies (Meetings of Board and its Powers) Rules, 2014* shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

- (c) **Cancellation of Registration Certificate-** According to section 4 of the Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Reserve Bank may cancel a certificate of registration granted to a securitization company or a reconstruction company, if such company-
- (i) ceases to carry on the business of securitisation or asset reconstruction; or
 - (ii) ceases to receive or hold any investment from a qualified institutional buyer; or

- (iii) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
- (iv) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or
- (v) fails to
 - (a) comply with any direction issued by the Reserve Bank under the provisions of this Act; or
 - (b) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or
 - (c) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
 - (d) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3.
- (d) According to section 28 of the Competition Act, 2002, the Commission, may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position. The order may provide for all or any of the following matters, namely:—
 - (i) the transfer or vesting of property, rights, liabilities or obligations;
 - (ii) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
 - (iii) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
 - (iv) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;
 - (v) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;
 - (vi) any other matter which may be necessary to give effect to the division of the enterprise.

Question 7

Answer any four:

- (a) *Winding-up proceeding has been commenced by the court against Lucky Limited, a non-government company. Even after completion of one year from the date of commencement of winding up proceedings, it has not been possible to conclude the same. Discuss the duties of the liquidator with respect to auditing and filing of the*

required statements with the appropriate authority as per the provisions of the Companies Act, 1956. Also discuss the penalty which can be imposed on the liquidator for contravention of the above provisions. (4 Marks)

- (b) *Sky Limited, a listed company has been incorporated under the Companies Act, 2013. An intermittent vacancy of a woman director has arisen on 15th June, 2016. Advise the company to fill the vacancy as per the provisions of the Companies Act, 2013. The Board meeting was held on 14th August, 2016.* (4 Marks)
- (c) *Can a holding company advance any loan to its wholly owned subsidiary company? What are the relevant provisions of the Companies Act, 2013 with regard to granting of loans by holding company to its wholly owned subsidiary company? Mention the penalties for the contravention of the provisions of the Company Act, 2013.* (4 Marks)
- (d) *Explain very briefly the significance of conjunctive and disjunctive words "or" "and" in the matter of interpretation of statutes.* (4 Marks)
- (e) *Discuss the provisions relating to annual reports of Government Companies-*
 - (i) *Where in addition to the Central Government, any State Government is a member of the company.*
 - (ii) *Where the Central Government is not a member of the Government Company.*

(4 Marks)

Answer

- (a) According to section 551 of the Companies Act, 1956, where the winding-up proceedings of a company has been commenced but it has not been possible to conclude it within one year from its commencement, in such a case, the liquidator is required to file in the Court (in case of a winding-up/by or subject to supervision of the Court) or with the Registrar in case of a voluntary winding-up, a statement in the prescribed form. The statement is to contain the prescribed particulars and is to be duly audited by a qualified auditor with respect to the proceedings in and the position of the liquidation. This statement is to be filed within two months of expiry of such a year. This statement is to be filed at intervals of not more than one year or such shorter intervals as may be prescribed. The liquidator has to comply with these requirements unless he is exempted from so doing wholly or partly by the Central Government.

The following penalties can be imposed on the liquidator for contravention of the provisions of this section, namely:

- (i) fine up to ₹ 5,000 for every day of the liquidator's failure in complying with the requirement of the Section.
- (ii) If the liquidator makes willful default in causing the statement to be audited by a person qualified to act as auditor of the company, the liquidator shall be punishable

with imprisonment for a term which may extend to six months, or with fine which may extend to 10,000 rupees, or with both.

- (b) According to second proviso to section 149(1) of the Companies Act, 2013, at least one woman director shall be on the Board of such class or classes of companies as may be prescribed.

Further, any intermittent vacancy of a woman director shall be filled up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later.

An intermittent vacancy of a woman director has arisen in Sky Limited on 15th June, 2016. The said vacancy shall be filled up by the Board at the earliest but not later than immediate next Board meeting (14th August, 2016) or 3 months from the date of such vacancy (14th September, 2016), whichever is later. Thus, the vacancy can be filled by 14th September, 2016.

- (c) According to section 185 of the Companies Act, 2013, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

However, the above restriction does not apply where any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company.

Provided that the loans made by the holding company to its wholly owned subsidiary, should be utilized by the subsidiary company for its principal business activities.

Thus, a holding company can grant loan to its wholly owned subsidiary company in accordance with the provisions of section 185 of the Companies Act, 2013.

Penalty for contravention: If any loan is advanced or a guarantee is given or provided in contravention of the provisions of section 185, the following penalties shall be leviable-

- (i) On Company: Minimum- 5 lakhs and maximum- 25 lakhs
- (ii) On defaulting director and the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person:

Imprisonment- Maximum 6 months, or,

Fine- Minimum- 5 lakhs and maximum- 25 lakhs, or,

Both imprisonment and fine.

- (d) **Conjunctive and Disjunctive Words 'or' 'and':** The word 'or' is normally disjunctive and 'and' is normally conjunctive. However, at times they are read as vice versa to give effect to the manifest intention of the legislature as disclosed from the context. This would be

so where the literal reading of the words produces an unintelligible or absurd result. In such a case 'and' may be read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favourable to the subject, provided that the intention of the legislature is otherwise quite clear. This falls under the rule of Exceptional Construction for interpretation of Law.

- (e) Section 394 of the Companies Act, 2013 provides for annual reports on Government companies.

According to section 394 (1) of the Companies Act, 2013, where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be prepared and laid before Parliament with the copy of audit report and comments made by the Comptroller and Auditor-General of India.

- (i) According to section 394 (2) of the Companies Act, 2013 where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under section 394 (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred above.
- (ii) According to section 395 of the Companies Act, 2013, where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—
- (a) Prepared within the time specified in sub-section (1) of section 394; and
- (b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section.