

PAPER – 4 : CORPORATE LAWS AND SECRETARIAL PRACTICE

Question 1

Answer any two of the following:

- (a) M/s Star Health Specialities Ltd. owns a Multi-specialty Hospital in Chennai. Dr. Hamilton, a practising Heart Surgeon, has been appointed by the company as its non-executive ordinary director and it wants to pay him fee, on case to case basis, for surgery performed on the patients at the hospital. A question has arisen whether payment of such fee to him would amount to payment of managerial remuneration to a director subject to any restriction under the Companies Act, 1956.

Advise the company, which seeks to ensure that the same does not contravene any provision of the Companies Act, 1956. (5 Marks)

- (b) The shares of MLM Ltd. were listed in Cochin Stock Exchange. The stock exchange delists the shares of the company. The aggrieved company approaches you to know the remedy available to the company. Give your suggestion to the company keeping in view the provision of the Securities Contracts (Regulation) Act, 1956. (5 Marks)
- (c) Explain the powers, which can be exercised by the Securities and Exchange Board of India under the Securities Contracts (Regulation) Act, 1956, while approving the schemes for corporatisation and demutualization submitted by recognized stock exchanges, so that there is segregation of ownership and management from the trading rights of members of such stock exchanges. (5 Marks)

Answer

- (a) Under the proviso to sub-section (1) or section 309 of the Companies Act, 1956, in case–
- (i) the services rendered are of a professional nature; and
 - (ii) in the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession,
- the remuneration paid for these services shall be outside the scope of Section 309 of the Act and shall not be a part of managerial remuneration. It is then not open to the Central Government to put any restriction on the amount of remuneration payable to him for his approach work. The company is, accordingly, advised to approach the Ministry of Company Affairs to seek an affirmative expression of opinion that Dr. Hamilton who is a qualified surgeon, possesses the requisite qualification to practice the profession of surgery.
- (b) Section 21A of Securities Contracts (Regulation) Act, 1956 contains the provision relating to delisting of securities. As per this section
- (1) A recognized Stock Exchange may delist the securities after recording reasons therefor from any recognized stock exchange on any ground or grounds as may be prescribed under this Act.

- (2) The Securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.
- (3) A listed company may file an appeal before the Securities Appellate Tribunal (SAT) against the decision of the recognized stock exchange delisting the securities within fifteen days from the date of the decision of recognized stock exchange delisting the securities.
- (4) Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period of not exceeding one month.

So here, the company may make an appeal to the Securities Appellate Tribunal against the delisting within fifteen days or such extended period not exceeding one month after showing sufficient cause of not filing within fifteen days.

(c) Corporatisation and Demutualisation – Power of SEBI under SCRA, 1956

SEBI has been empowered under sub-section (2) of Section 4B of Securities Contracts (Regulation) Act, 1956 to approve the scheme of corporatisation and demutualisation with or without modification. SEBI can reject the proposed scheme if it is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme. Besides these general powers, SEBI has got certain specific powers under Section 4B(6). SEBI, while approving the scheme, may, by an order in writing restrict

- (a) the voting rights of the shareholders who are also stock-brokers of the recognized stock exchange.
- (b) the right of shareholders in a stockbroker of the recognized stock exchange to appoint the representatives on the governing board of the stock exchange.
- (c) the maximum number of representatives of the stock-broker of the recognized stock exchange to be appointed on the governing board of the stock exchange shall not exceed one-fourth of the total strength of the governing body.

On receipt of approval of scheme, stock exchange will issue shares to public within 12 months so that at least 51% equity shares are with public other than shareholders having trading rights. SEBI can extend the period upto another 12 months [Section 4B(8)].

Question 2

Answer any two of the following:

- (a) Mr. Loma, an Indian National desires to obtain foreign exchange for the following purposes:
 - (a) Payment to be made for securing insurance for health from a company abroad.
 - (b) Payment of commission on exports under Rupee State Credit Route.
 - (c) Gift remittance exceeding US Dollars 10,000.

Advise him whether he can get foreign exchange and if so, under what condition?

(7 Marks)

- (b) Mrs. Kamala, a resident in India is likely to inherit an immovable property in U.S.A. from her father, who is a resident outside India. Advise Mrs. Kamla about the restrictions, if any, in this regard under the Foreign Exchange Management Act, 1999 explaining the relevant provisions of the Act. Will your answer be different, if she is likely to inherit foreign securities? (7 Marks)
- (c) (i) Mr. ZPM was appointed as a Member of the Competition Commission of India by Central Government. He has a professional experience in international business for a period of 12 years, which is not a proper qualification for appointment of a person as member. Pointing out this defect in the Constitution of Commission, Mr. YKJ, against whom the commission gave a decision, wants to invalidate the proceedings of the commission. Examine with reference to the provisions of the Competition Act, 2002 whether Mr. YKJ will succeed.
- (ii) ABC Ltd. made an initial public offer of certain number of equity shares. Examine whether these shares can be considered as 'Goods' under the Competition Act, 2002 before allotment. (7 Marks)

Answer

- (a) Under provision of Section 5 of FEMA 1999, certain Rules have been made for drawl of foreign exchange for current account transactions. As per these rules, foreign exchange for some of the current account transaction is prohibited. As regards some other current account transaction foreign exchange can be drawn with prior permission of the Central Government while in case of some other current account transaction, the prior permission of Reserve Bank of India is required.
1. The payment required to be made for securing insurance for health from a company abroad as referred in item 1 can be made after obtaining permission from Central Government of India, as prescribed in Second Schedule to Foreign Exchange Management (Current Account Transaction) Rules 2000. Hence Mr. LOMA can draw foreign exchange after obtaining such permission.
 2. As regards item no. 2 i.e., the payment of commission on export under Rupee State Credit Route, such payment is prohibited as referred in First Schedule to Foreign Exchange Management (Current Account Transaction) Rules 2000. Hence Mr. LOMA cannot withdraw for the said purpose.
 3. The item referred here is covered by Third Schedule to Foreign Exchange Management (Current Account Transaction) Rules 2000. As per this schedule, gift remittance exceeding USD 5,000 per beneficiary per annum requires permission of RBI. Since the amount involved here is more than USD 5000, Mr. LOMA can draw foreign exchange after permission from RBI.

In all the cases, where remittance of foreign exchange is allowed either by general or specific permission, the remitter has to obtain the foreign exchange from an authorized person as defined in Section 2(c) read with section 10 of FEMA, 1999.

- (b) Acquisition of immovable property situated outside India and foreign securities by a person resident in India are regulated by Sections 4 and 6 of the Foreign Exchange Management Act, 1999.

Section 4 of FEMA 1999 provides that no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security of any immovable property situated outside India, except as provided in the Act. Section 6(4) provides that a person resident in India may hold, own, transfer or invest in foreign currency foreign security or any immovable property situated outside India if such currency security or property was inherited from a person who was resident outside India. Further, RBI is empowered to frame regulations relating to capital account transactions in consultation with the Central Government (Section 6(2)) and Section 6(3). Accordingly RBI has issued certain Regulations. Two regulations are relevant in this case.

In terms of Regulations 5(1) (a) of Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations 2000, a person resident in India may acquire immovable property outside India by way of gift or inheritance from a person who was resident outside India without approval of RBI.

Similarly, in terms of Regulations 19(1) (iii) of Foreign Exchange Management (Transfer or issue of any Foreign Securities) Regulation 2000 a person resident in India being an individual may acquire foreign securities by way of inheritance from a person whether resident in or outside India.

In the light of the provisions of FEMA and Regulations explained above there are no restrictions with regard to inheritance of either immovable property situated outside India or foreign security. Such inheritance do not require approval of RBI.

- (c) (i) As per section 15 of Competition Act 2002 any act or proceeding of the Commission shall not be invalidated merely on the ground of:
- (a) any vacancy in, or any defect in the constitution of the Commission; or
 - (b) any defect in the appointment of a person acting as a Chairperson or as a member; or
 - (c) any irregularity in the procedure of the Commission not affecting the merits of the case.

Here in this case Mr. ZPM should have professional qualification of not less than 15 years as per section 8 of the Act but this disqualification will not invalidate the proceeding of the Commission.

- (ii) Section 2(i) of Competition Act, 2002 defines 'goods' as follows:

'Goods' means goods as defined the Sale of Goods Act, 1930 and includes –

- (a) products manufactured, processed or mined;
- (b) debentures, stock and shares after allotment

- (c) in relation to goods supplied, distributed or controlled in India, goods imported into India.

Hence, debentures and shares can be considered as 'goods' within the meaning of section 2(i) of Competition Act, 2002 only after allotment and not before allotment.

Question 3

Answer any two of the following:

- (a) State the circumstances under which Securities and Exchange Board of India may exercise the following powers:
- (i) Prohibit a company from issuing prospectus, any offer document or advertisement soliciting money from public for the issue of securities.
 - (ii) Pass cease and desist order in respect of any listed company.

Explain the remedies available under Securities and Exchange Board of India Act, 1992 to companies aggrieved by the above orders of SEBI. (8 Marks)

- (b) XYZ Automobiles Ltd. intends to make a public issue of 2,00,00,000 equity shares of Rs. 10 each through the 100% book building process indicating a price band.

You are required to answer the following with reference to the SEBI (Disclosure and Investor Protection) Guidelines:

- (i) What is the price band that can be indicated in the red herring prospectus, if the floor price is proposed to be fixed at Rs. 300 per equity share ?
 - (ii) What are the restrictions, if the company wants to revise the price band during the bidding period?
 - (iii) How the shares are to be allocated to different categories of investors like Qualified institutional buyers, Retail individual investors, etc.? (8 Marks)
- (c) There is an apparent difference between section 292 of the Companies Act, 1956, which permits the board to delegate its power to make loans and section 372A of the Companies Act, which requires approval of loan by a resolution passed at a board meeting with the consent of all the directors present at the meeting. How would you interpret these two provisions applying the rule of harmonious construction ? (8 Marks)

Answer

- (a) Power of SEBI and remedies available to aggrieved persons: Section 11 of SEBI Act, 1992 specifies that the basic duty of SEBI is to protect the interests of investors in securities and regulate the securities market. The certain measures which can be taken by SEBI are to fulfill its objectives are listed in Section 11, 11A, 11 AA, 11B, 11C and 11 D. Section 11 A(2)(b)(i) specifically empowers SEBI to prohibit any company from issuing prospectus, any offer document or advertisement soliciting money from the public for the issue of securities by general or special order if such prohibition is necessary to the purpose of protection of investors.

According to proviso to Section 11 D, SEBI can issue cease and desist order in respect of any listed company only if SEBI has reasonable grounds to believe that such company has indulged on insider trading or market manipulation and not otherwise.

Aggrieved companies may appeal against orders of SEBI made under SEBI Act, rules or regulations to Securities Appellate Tribunal (SAT) under Section 15T (1)(a). Such appeal should be filed within 45 days from the date on which a copy of the order of SEBI is received by the company. It shall be in the prescribed form accompanied by prescribed fees. Delay in filing appeal can be condoned by SAT for sufficient reasons (Section 15T(3)). Efforts will be made by SAT to dispose of appeal within 6 months [Section 15T(6)].

If the company is aggrieved by the order of SAT, further appeal against the order of SAT can be made to Supreme Court within 60 days from the date of communication of the order on any question of law arising out of such order. The period can be extended by Supreme Court upto further 60 days if sufficient cause is shown (Section 15Z).

Thus, appeal lies only on question of law. As far as facts are concerned, decision of SAT is final. Further, Section 20 A bars jurisdiction of civil court in respect of orders issued by SEBI.

(b) Book Building:

- (1) Cap Price: In the price band, the lower end is called floor price and the higher end is called cap price. As per SEBI Guidelines, the cap of the price band shall not be more than 20% of the floor price of the band i.e., cap of the price shall be less than or equal to 120% of the floor price of the band. Applying this principle, the cap price shall be equal to or less than Rs. 360/. Hence the company may indicate a price band with a floor price of Rs. 300/- and maximum cap price of Rs. 360/- [Clause 11.3.1 (viii) (b) (a) of SEBI Guidelines, 2000].

- (2) Revision of Price Band: The price band can be revised during the bidding period in which case the maximum revision on either side shall not exceed 20% i.e., floor of price band can move up or down to the extent of 20% of floor of the price band disclosed in red herring prospectus and cap of the revised price band will be fixed accordingly (i.e., maximum 20% above floor price) [Clause 11.3.1. (viii) (b) (b)].

However, any revision in the price band should be widely publicized by informing the stock exchanges, issuing press release and also on the relevant website and the terminals of syndicate members. [Clause 11.3.1 (viii) (b) (c)]

In case the price band is revised, the bidding period shall be extended for a further period of 3 days subject to the total bidding period not exceeding 10 days [Clause 11.3.4.1 (i) read with clause 11.3.1 (viii) (b) (d)].

There are certain additional requirements in case the revision involves lowering of the floor price. The manner in which the shortfall, if any, in the project financing, arising on account of lowering of price band to the extent of 20%, will be met shall be disclosed in the red herring prospectus. It shall also be disclosed that allotment shall not be made unless the financing is tied up. [Clause 11.3.1 (viii) (b) (e)].

Allocation to different categories of investors: Maximum 50% of the net issue to the public shall be allocated on a proportionate basis to Qualified Institutional Buyers (QIBs) like banks, FIIs, Financial Institutions, Mutual Funds. 5% of the QIB portion shall be available for allocation on a proportionate basis to Mutual Funds only and the remainder of the QIB portion shall be available for allocation on a proportionate basis to all QIBs, including Mutual Funds.

At least 15% of the Net Issue to the public shall be available for allocation on a proportionate basis to non-Institutional Bidders.

At least 35% of the Net Issue to the public shall be available for allocation on a proportionate basis to Retail individual bidders subject to valid bids being received at or above issue price [clause 11.3.5(i) and clause 11.3.5 (i) (a) as amended w.e.f., 19.9.05].

(c) Rule of Harmonious Construction

Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them. This is what is known as the Rule of Harmonious Construction. Importance should not be attached to a single clause in one section overlooking the provisions of another section. If it is impossible to avoid inconsistency, the provision which was evaluated or amended later in point of time must prevail. The rule of Harmonious Construction is applicable only where there is real and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other.

Every loan falling within the purview of Section 372 A of the Companies Act, 1956 must be sanctioned by a resolution of the Board of Directors passed at its meeting (Section 372 A(2)). Every such resolution must be passed with the consent of all the directors present at the Board meeting, that is no one dissenting or unanimously.

Every loan covered by Section 372 A falls within the purview of Section 292 (i)(e). That section permits delegation by the Board of its power of making loans vide proviso to Section 292 (i), subject to the conditions stipulated in Section 292(3). The condition that the resolution delegating the power must specify the total amount upto which loans may be made by the delegate, the purposes for which the loans may be made and the maximum amount of loans which may be made for each purpose in individual cases.

However, by harmonious interpretation of both the provisions of Section 292 and 372A and in absence of specific prohibition in Section 372A against delegations, the Boards power under Section 372A may be delegated in accordance with the provisions of Section 292 by passing unanimous resolution of the Board. Any other interpretation will make provisions of Section 292 redundant.

Question 4

- (a) Mr. Adam, a 15% shareholder of a company and other shareholders have lost confidence in the Managing Director (MD) of the company. He is a director not liable to retire by

rotation and was re-appointed as Managing Director for 5 years w.e.f. 1.4.2005 in the last Annual General Meeting of the company.

Mr. Adam seeks your advise to remove the MD after following the procedure laid down under the Companies Act, 1956.

- (i) Specify the steps to be taken by Mr. Adam and the Company in his behalf;
 - (ii) Draft a suitable resolution to be passed for removal of MD;
 - (iii) Is it necessary to state reasons to support the resolution for his removal ? (8 Marks)
- (b) Registrar of Companies has issued a show cause notice to the company and its directors to show cause as to why prosecution be not filed against them for not appointing a qualified Company Secretary, in contravention of the provision of section 383A of the Companies Act, 1956. According to the company, there is adequate justification for not appointing the Secretary as it is a closely held company with only 7 shareholders and there is no adequate work for him. Further, the company cannot afford to pay him the salary, which will not be less than Rs. 15,000 to 20,000 p.m.

What is the remedy available to the company and its directors –

- (i) before any prosecution is filed by ROC ?
- (ii) after the prosecution is filed by ROC in the Magistrate's Court ? (7 Marks)

Answer

- (a) (i) Under Section 284 of the Companies Act, 1956, a company may, by ordinary resolution, remove a director before the expiry of his tenure. For the purpose, special notice from a shareholder (Mr. Adam in the present case) shall be required to be given to the company for moving a resolution to remove a director. On receipt of notice, the company shall forthwith send a copy thereof to the director concerned (MD in the present case) and he shall be entitled to be heard on the proposed resolution at the meeting. Copy of the representation, if any, made by the director be also sent to all members of the company to whom notice of the general meeting is normally sent. In case, the representation is received too late, the same shall be read at the meeting. The representation need not be sent if the Company Law Board is satisfied that it will cause needless publicity for defamatory matter.

Under Section 190, special notice of the intention to move the resolution shall be given not less than 14 days before the meeting.

In the present case, if the AGM is due to be held, Mr. Adam may send the special notice 14 days before the AGM. Otherwise, he may request the company to convene EGM under section 169 for consideration of the special notice and resolution for removal of MD. He already holds more than 10% shares in the company.

Once the ordinary resolution is passed in the general meeting, MD will cease to be a director of the company and consequently MD of the company.

- (ii) Mr. Adam may give special notice of his intention to move the following resolution, as ordinary resolution: "RESOLVED THAT Mr., Managing Director of the Company be and is hereby removed as a director of the company under Section 284 of the Companies Act, 1956 with immediate effect."
 - (iii) A statement of reasons is not necessary to support the resolution for removal of a director. LIC vs. Escorts Ltd. (1986) 59 Comp. Cases 548(SC)
- (b) Provisions of Section 383A of the Companies Act, 1956 are mandatory in nature requiring appointment of Whole Time Qualified Company Secretary where the paid up capital of the company is Rs. 2 crores or more. If a company fails to appoint the Company Secretary, the company and every officer of the company in default is liable to fine of Rs. 500 for every day during which the default continues. It is also provided that it shall be a defence to prove that all reasonable efforts were made to comply with this provision or that the financial position of the company was such that it was beyond its capacity to engage a Whole Time Secretary.

In the present case, it appears that the financial position of the company does not permit it to appoint a Whole Time Qualified Company Secretary. However, such a defence is available to the accused during the trial by the Magistrate's court. It is advisable for the company to appoint the secretary, even though there is not sufficient work under the company law; however, he may also attend other functions in the company.

Remedy before prosecution is filed

It is open to the company and its directors, in reply to show cause notice, to make an application under section 621A of the Companies Act, 1956 to Registration of Companies for compounding the offence, after appointing the secretary. ROC shall forward the same to the CLB/Regional Director, as the case may be, along with his comments. Once the offence is compounded, no prosecution can be filed by ROC.

Alternatively, directors may approach the High Court for relief under Section 633(2) of the Act, having acted honestly and reasonably and they ought to be excused. However, no relief is available to company.

Lastly, the company and directors may reply to the show cause notice with their explanations and request for not taking any action. However, normally in such a case ROC may leave the matter to be decided by the court, after the prosecution is filed by him.

Remedy after prosecution is filed

Application may be made under Section 621A by the company and its directors for compounding the offence to ROC, even after the prosecution is filed. Once the offence is compounded by CLB/Regional Director, as the case may be, the same shall be brought to the notice of the court by ROC and the company and its directors shall be discharged.

The remedy; under Section 633(2) before the High Court is not available after the prosecution is filed. A similar relief can, however, be sought from the trial court under Section 633(1) of the Act.

The other remedy is to contest the prosecution case in the trial court and plead its case in defence.

It is also open to them to plead guilty on the first date of appearance and pay the fine imposed by the court.

Question 5

- (a) M/s. Raman Limited having a paid up share capital of Rs. 5 crores owns an agency of Cement Corporation of India Ltd. and proposes to supply cement, on credit, to M/s. Raman Enterprises Private Limited. Mr. Raman is a common Director in both the companies.

State the requirements of the Companies Act, 1956, if any, to be complied with by the company on the facts of this case.

Will it make any difference, if -

- (i) M/s. Raman Enterprises Private Limited were a public company;
 - (ii) M/s. Raman Limited were carrying on real estate business and it proposes to sell a flat to M/s. Raman Enterprises Private Ltd. for Rs. 50 lakhs? (8 Marks)
- (b) The official liquidator of ABC Limited (in liquidation) instituted misfeasance proceedings under section 543 of the Companies Act, 1956 against 'A', a director of the company in liquidation. During the pendency of misfeasance proceedings 'A' died.

What is meant by Misfeasance ? Is it possible for the official liquidator to implead the legal representatives of 'A' and continue the proceeding against them ? (7 Marks)

Answer

- (a) Under Section 297 of the Companies Act, 1956 except with the consent of the board of directors of a company, a director of the company or his relative; a firm in which such director or relative is a partner; or a private company of which the director is a member or director, shall not enter into any contract with the company for the sale, purchase or supply of any goods, materials or services. Where the paid up capital of the company is not less than Rs. 1 crore, it will also require previous approval of the Central Government. Exemption from the said provisions are available in the following circumstances -
- (i) the purchase of goods and materials from the company or sale of goods and materials to the company is for cash at prevailing market prices;
 - (ii) any contract for sale, purchase or supply of goods, materials and services in which the company, or director etc. regularly trades the cost of which does not exceed Rs. 5,000 in any year.

In the present case, Mr. Raman is a common director in both the contractee companies. Accordingly, apart from the approval of the Board, previous approval of the Central Government (power delegated to Regional Director) is also required for entering into the proposed contract of supply of cement on credit. The provisions of Section 299 and 300

of the Companies Act, 1956 have also to be complied with and in the Board meeting Mr. Raman shall disclose his interest in the contract and shall not participate in the discussions on this item and shall not vote for the same. The particulars of the contract be also recorded in the Register of Contracts.

- (i) Section 297 does not apply to a contract where both the contractee companies are public companies. If Ram Enterprises happens to be a public company, section 297 will have no applicability.
- (ii) Section 297 does not apply to a contract relating to immovable properties being the sale of flat in case of Raman Ltd. is a real estate company. The expression 'goods' used in the section has been defined in the Sale of Goods Act, 1930 according to which it means every kind of movable property. Hence, sale of flat will not amount to sale of 'goods' for purposes of section 297 of the section.

(b) Misfeasance

The term 'misfeasance' has not been defined in the Companies Act, 1956. It can be considered as an act or omission in the nature of breach of trust in relation to the company which causes losses or injuring to the company. Although loss to the company has not been expressly stated in Section 543 nevertheless such 'loss' has to be implied in case of misapplication or retainer. Only such an act of misfeasance as results in the loss to the company will fall within the ambit of section 543.

As regards the second question (ii) in case of death of the directors, the Supreme Court held that the proceedings commenced against the delinquent director of a company liquidation under section 543 can be continued after his death against his legal representatives and the amount declared to be due in such misfeasance proceeding can be realized from the estate of the deceased on the hands of his legal representatives. The Court further held that the legal representatives would not, however, be liable for any sum beyond the value of the estate of the deceased in their hands (Official Liquidator, Supreme Bank Ltd. V.P.A. Tendolkar (1973) 43 Comp. (Case 382) (Official Liquidator vs. Parthasarthy Sinha (1983) 53. Comp. Case (SC) (3c)). Hence the misfeasance proceeding can be continued against the legal representatives of A.

Question 6

- (a) Bush and Tony Private Limited approached you seeking your opinion on the following appointments relating to Directors and their relatives.
 - (i) Appointment of Mr. Somen (relative of one of the Directors) as the Managing Director of the company on a monthly remuneration of Rs. 35,000 and other perquisites as are currently being allowed to other executives of the company.
 - (ii) Appointment of Mr. Raman (relative of one of the Directors) as the General Manager – Sales of the company on a consolidated monthly remuneration of Rs. 30,000.

Express your opinion explaining the relevant provisions of the Companies Act, 1956.

(8 Marks)

- (b) XYZ Dairy Products Producer Company Limited proposes to shift its Registered Office from Hosur in Tamil Nadu to Bangalore in Karnataka. Explain the requirements under the Companies Act, 1956 to give effect to his proposal. (7 Marks)

Answer

- (a) As per provisions of Section 314(1) of the Companies Act, 1956, except with the consent of the company accorded by way of a special resolution, no director or relative of a director shall hold any office or place of profit, which carries a monthly remuneration of Rs. 10,000 or more, except that of Managing Director or Manager of the company.

Further, as per the provisions of Section 314(1B) of the Companies Act, 1956 no relative of a director can be appointed to any office or place of profit under the company which carries a monthly remuneration of not less than Rs. 50,000 (as per notification vide 5th February, 2003) except with the prior consent of the company by way of a special resolution and the approval of the Central Government.

In the light of the above legal provisions, the opinion of the appointments of various persons as sated in the question can be expressed as follows:

- (i) Mr. Somen is being appointed as the Managing Director of the company, the provisions of section 314(1) are not attracted even though he is relative of a director. This is because the appointment of Managing Director or Manager is outside the provisions of section 314 of the Companies Act, 1956. If Mr. Somen is not already a director of the company, steps must be taken to appoint him first as an additional director / director. Thereafter he may be appointed as Managing Director by complying with the requirements under section 269 read with schedule XIII to the Companies Act. The appointment can be made by the board subject to the approval the company in general meeting as the proposed remuneration is within the limits laid down in schedule XIII.
 - (ii) Since the remuneration be paid to Mr. Raman does not exceed Rs. 50,000/- per month, provisions of section 314(1B) are not attracted and approval of the Central Government is not required. However, as the proposed remuneration exceeds of Rs. 10,000/- his appointment shall require the passing of special resolution by the company. The special resolution is required to be passed at a general meeting of the company held for the first time after such appointment.
 - (iii) In the case of Mr. Kabi, since the remuneration proposed to be paid to him exceeds Rs. 10,000 but does not exceeds Rs. 50,000/- per month, his appointment shall require the passing of special resolution by the company only and no approval of the Central Government is required. The special resolution according the consent may be passed at a general meeting of the members of the company held for the first time after such appointment.
- (b) Shifting of Registered office of a producer company

The registered office of XYZ Dairy Products Producers Company Ltd. from Hosur in Tamil Nadu to Bangalore in Karnataka requires amendment to the Memorandum of Association.

The producer companies are required to comply with the provisions contained in Part IX A of the Companies Act, 1956. According to Section 581 ZQ, the producer companies are also required to comply with the other provisions of the Companies Act insofar as the same are not varied by, or are inconsistent with the provisions of Part IX A. Hence XYZ Dairy Products Producer Company Ltd. has to comply with the requirements under Section 581 H and also take into account the circumstances under which the registered office of the company may be shifted from one state to another state as stated in Section 17(1).

The requirements under Section 581 H are – (1) special resolution for altering the situation clause of memorandum of Association (2) A copy of the amended memorandum, together with a copy of the special resolution duly certified by two directors shall be filed with the Registrar of Companies, Tamil Nadu and Registrar of Companies, Karnataka within 30 days (proviso to section 581 M(2)). The alteration of the Memorandum of Association is required to be confirmed by the Company Law Board on petition (Section 581 H(4))

Form No. 18 is also required to be filed with the Registrar of Companies, Karnataka as required under Section 146 (i.e. notice of change of situation of registered office)

Question 7

- (a) Messrs Ahimsa Private Limited was incorporated in the year 2001 under the Companies Act, 1956 by 3 brothers, namely, Amit, Anil and Akhlesh. All the three were Promoter-directors named in the Articles of Association and subscribed for 100 shares each in the company through Memorandum of Association. Thereafter, from time to time, further shares were allotted in proportion of one-third to each of them and in due course, the company started earning substantial profits. Due to greed of money, the two brothers, namely, Amit and Anil, joined hands together to assume complete control of the company, leaving their brother, Akhlesh in lurch. Both the brothers got further shares allotted to themselves, thereby their joint shareholding increased from 66 2/3% to 90%, while the shareholding of Akhelesh got reduced from the erstwhile 33 1/3% to 10%. No notice of any Board Meeting was sent to Akhlesh, who was sidelined and was also removed as a Director.

Aggrieved by the decisions taken by his two brothers at his back, Akhlesh seeks your advice for taking out appropriate proceedings before the court or judicial authority of competent jurisdiction. Also suggest the nature of reliefs he may claim while filing his case. (8 Marks)

- (b) Mr. XYZ is the Managing Director of M/s. ABC Ltd. and also BCD Ltd. PQR Ltd. decides to appoint him as the Managing Director of the company. State the legal requirements under the Companies Act, 1956 to give effect to the proposed appointment. Draft a resolution for the appointment of Mr. XYZ as the Managing Director of PQR Limited. (7 Marks)

Answer

- (a) Under Section 397 of the Companies Act, 1956 on an application by any member of a

company, the Company Law Board (Tribunal as per amended provision which has not come into force) is of the opinion that –

- (i) the company's affairs are being conducted in a manner which is prejudicial to public interest or in a manner oppressive to any member(s); and
- (ii) to wind up the company would unfairly prejudice such member(s), but that otherwise the facts justify winding up of the company on just and equitable ground,

The CLB may, with a view to bringing to and end the matters complained of, make such order as it thinks fit.

As per section 399, a member holding 10% shares is entitled to file such a petition.

In the present case, Mr. Akhlesh was holding 33⅓% shares in the company which is nothing but a quasi partnership and was participating in the management. By further allotment of shares in a clandestine manner and without the consent of Mr. Akhlesh, his shareholding was reduced to 10% while the shareholding of his brothers stood at 90%. This is a serious act of oppression of Akhlesh, a minority shareholder. On similar facts, it was held by Supreme Court in *Dale & Carrington Inv. Private Ltd. Vs. P.K. Prathpan*, (2004) 122 Comp cases 175(SC) that assuming meetings of board of directors did take place, the manner in which the shares were issued in favour of R without informing other shareholders about it and without offering them to any other shareholder, was totally mala fide and the sole object of R in this was to gain control of the company by becoming a majority shareholder. This was clearly an act of oppression on the part of R. The only relief that has to be granted in the present case was to undo the advantage gained by R through his manipulation and fraud. The allotment of all the additional shares in favour of R had to be set aside.

Section 397 protects the rights of shareholders and not as a director. It has, however, been held by CLB in a number of cases that in a family company like the present one, removal of the promoter-director is also an act of oppression.

In the facts and circumstances of this case, Akhlesh is advised to file a petition under Section 397 of the Act. Being a 10% shareholder he is entitled to file the petition, before the Principal Bench of Company Law Board at New Delhi. He may seek the following reliefs:

- (i) the alleged allotment of further shares be declared null and void and set aside;
- (ii) the alleged removal of the petitioner, Mr. Akhlesh be declared as null and void and set aside;
- (iii) The Board of Directors be re-constituted with the petitioner and his two brothers and an independent person, as the Chairman of the board of directors to be appointed by the Company Law Board with casting vote;
- (iv) the petitioner may be appointed as Managing director of the company having substantial powers of management.

(b) As per section 316

- (a) A person can act a Managing Director in two or more than two companies provided none of those companies is a public company
- (b) a public company may appoint a person as its managing director, who is already a Managing Director or Manager in any other company (including a private company) only if such appointment is made by a unanimous resolution passed at a meeting of the board of which specific notice has been given to all directors then in India.
- (c) a person can be a Managing Director in more than two public companies only within the approval of the Central Government. Central Government may permit a person to be appointed as a Managing Director if it is satisfied that it is necessary that the company should have a common Managing Director for their proper working and function as a single unit.

So the PQR Ltd. can appoint Mr. XYZ as Managing Director of the company subject to approval of the Central Government.

Draft Resolution

“Resolved that subject to the approval of the Central Government under sub-section (4) of Section 316, Mr. XYZ who is already the Managing Director of two companies, namely M/s ABC Ltd. and M/s BCD Ltd., be and is hereby appointed as Managing Director of the company for a period of five years commencing from, with the consent of all the directors present at the meeting of which meeting and the resolution to be moved there at specific notice was given to all directors then in India, on the terms and conditions in the draft agreement tabled before the meeting and initialed by the Chairman for the purpose of identification and that SPM, the Secretary of the company be and hereby authorized to apply to the Central Government for seeking their approval.”

“Resolved further that Shir LMD, Director and Shri SPM, the Secretary of the company be and is hereby authorized to execute the said agreement subject to such modifications / alterations made by the Central Government while giving their approval and to affix the company seal of the company thereon”.

Question 8

- (a) The scheme of amalgamation was approved by overwhelming majority of the members of the merging companies, namely, ABC Ltd. and XYZ Ltd. at meetings called as per directors of the court. When the scheme of amalgamation was awaiting sanction of the court, the exchange ratio was questioned by a small group of dissenting shareholders of ABC Ltd. The exchange ratio was fixed by a firm of reputed Chartered Accountants. Examine with reference to the court rulings, whether the dissenting shareholders will succeed. (8 Marks)
- (b) Premier Housing Finance Company Ltd. is prepared to give housing loans to the employees of Supreme Chemicals Ltd. subject to the condition that the loans are guaranteed by Supreme Chemicals Ltd. Supreme Chemicals Ltd. is not a listed company and the company will be exceeding the limits prescribed under the Companies Act, 1956

by providing such guarantee. The company desires to give the guarantee early as part of employees' welfare measure without waiting for the next annual general meeting, which is due only after eight months. Advise the company about the legal requirements under the Companies Act, 1956 to give effect to the above proposal. What would be your advice, if the company was required to provide security instead of guarantee? (7 Marks)

Answer

(a) Exchange Ratio

In this case, the exchange ratio was fixed by a reputed firm of Chartered Accountants and the scheme of amalgamation was approved by overwhelming majority of members of both the merging companies i.e., ABC Ltd. and XYZ Ltd.

Courts (now NCLT) leave the aspect of share valuation to the expert valuers and shareholders, unless the person who challenges the valuations satisfies the court that the valuation is grossly unfair, the court will not disturb the scheme (Piramal Spg. & Weaving Mills Ltd. in re (1980) 50 Comp. Cas. 514 (Bom)).

In *Micheer H. Mafatlal Vs. Mafatlal Industries Ltd.* ((1996) 87 Comp. Cas 792 (SC)) it was held that the Company Court exercises supervisory jurisdiction in sanctioning the scheme. It has no appellate jurisdiction over commercial window of majority of members of that class.

Further in *Kiritbhai Hirala & Patel Vs. Arvind Intex Ltd.* (2000) 28 SCL 130 (Guj), it was held that the High Court cannot exercise the jurisdiction of an appellate court and interfere with the wishes of the requisite number of shareholders only because valuation figure could have been different had another method of valuation was followed. However, the court should interfere, if it finds that the scheme approved by majority is unconscionable, unfair or illegal.

In view of the above court rulings, the dissenting shareholders are not likely to succeed unless they are able to satisfy the court that the valuation is grossly unfair especially when the exchange rates is fixed by a reputed firm of Chartered Accountants.

Section 394A of the Companies Act, 1956 requires the court to give notice of every application made to it under section 391 or 394 to the Central Government. The Court should take into consideration the representations, if any, made to it by that government before passing any order. The Court is, however, not bound to accept the views of the Central Government. Thus objection of the Central Government as regards valuation of shares was rejected by the court in the face of views explained by two independent chartered accountants (*M.G. Investments & Industrial Co. Ltd. Vs. New Sherrycle Spinning & Manufacturing Co. Ltd.*). Thus, unless the Central Government establishes that the exchange ratio was unfair or inequitable and not in public interest, the court will refuse to interfere.

(b) Guarantee to a body corporate

Supreme Chemicals Ltd. proposes to give guarantee to a body corporate and as such it attracts section 372 A of the Companies Act, 1956. Where the aggregate of bonus and

investments so far made the amounts for which guarantee or security so far provided along with the proposed investment guarantee etc. exceeds the limits prescribed under Section 372 A(i), such investments, guarantee etc. are required to be authorised by a special resolution passed in a general meeting. Only after the special resolution is so passed, such investments, etc. can be made [First proviso to Section 372 A(1)].

However the second proviso to Section 372 A(1) provides an exception in the case of guarantee. The Board may give guarantee without being previously authorized by a special resolution, subject to the following condition:

- (i) Unanimous resolution is passed in the meeting of the Board authorizing to give guarantee
- (ii) Obtaining shareholders previous approval by special resolution is prevented by exceptional circumstances. In this case there is an urgent necessity.
- (iii) The Board resolution for providing the guarantee is confirmed at a general meeting (annual or extraordinary) within 12 months from the date of the Board Meeting.
- (iv) The special resolution must specify the particulars prescribed in the 3rd proviso to Section 372 A(1) such as the Limit, particulars of the Company to which guarantee is proposed to be given, purpose of the proposed guarantee, and other relevant details.

Subject to this above conditions, Supreme Chemicals Ltd. may give guarantee to Premier Housing finance Co. Ltd. without obtaining previous approval of the shareholders by special resolution.

This exception is available in the case of guarantee only. The board cannot provide security unless it is previously authorized by a special resolution, as the prescribed limits are likely to be exceeded.

Question 9

- (a)
 - (i) Articles of Association of a listed company has fixed payment of sitting fee for each Meeting of Directors subject to maximum of Rs. 10,000. In view of increased responsibilities of independent directors of listed companies, the company proposes to increase the sitting fee to Rs. 25,000 per meeting. Advise the company about the requirement under Companies Act, 1956 to give effect this proposal.
 - (ii) Ram & Company was appointed as auditor of ABC Ltd. at the Annual General Meeting held on 30th September, 2004. Can Ram & Co. continue as auditor of the company in case the next annual general meeting has not been held in time ? What would be the position in case the next annual general meeting was held on 30th September, 2005, but adjourned without considering the business of appointment or re-appointment of auditor ? (8 Marks)
- (b) Explain the legal position in respect of the following with reference to the provisions of the Companies Act, 1956:
 - (i) XYZ Limited, having one Indian subsidiary company and an overseas subsidiary

company, attached to its Balance sheet documents mentioned under section 212 in respect of its Indian subsidiary company only.

- (ii) Statutory auditors of a public company did not verify the correctness of the particulars furnished in the Boards' Report in respect of certain employees under section 217(2A). (7 Marks)

Answer

- (a) (i) Under Section 310 of the Companies Act, 1956 approval of the Central Government shall not be required where sitting fee for each meeting of the Board of a Committee thereof does not exceed the prescribed sum under Rule 10-B of the Central Government's (General Rules & Forms, 1956) as under:

1.	Companies with paid up capital of Rs. 10 crores and above or turnover of Rs. 50 crores and above	Sitting fee not to exceed Rs. 20,000
2.	Other companies	Sitting fee not to exceed Rs. 10,000

Any increase in the sitting fee will require amendment of relevant provision of the Articles of Association. In the given case, the proposed sitting fee of Rs. 25,000 will require approval of the Central Government as the same exceeds the prescribed limits. The company can pay the sitting fee upto Rs. 20,000 depending upon the aforesaid parameters laid down in Rule 10-B.

- (ii) Tenure of auditor

The tenure of an auditor is laid down in section 224(1) of the Companies Act, 1956. It is from the conclusion of the annual general meeting to the conclusion of the next annual general meeting. Therefore, the tenure of office of the auditor does not expire on the last date on which the annual general meeting was due to be held in terms of Section 166. Hence Ram & Co. can continue as auditor even if the AGM for the year 2005 has not been held in time.

In case AGM for 2005 was held on 30.9.05 that adjourned without considering the business of appointment or reappointment of auditor, the tenure of Ram and Co. will extend till the conclusion of the adjourned meeting.

- (b) Section 212 of the Companies Act, 1956 does not make any distinction between an Indian subsidiary and an overseas subsidiary company. Under section 4(4), a company shall be deemed to be the holding company of another, if only that other is its subsidiary. Under Section 4(5), the expression 'Company' includes any body corporate and the definition of body corporate in Section 2(7) includes a company incorporated outside India. In view of this, the Indian holding company is legally bound to comply with the requirements in respect of both the Indian and foreign subsidiary companies. However, if there is any difficulty in complying with this requirement, the Board of Directors of XYZ Ltd. may apply to the Central Government under section 212(8) either to waive the

requirement or to modify the same. Hence, the company has violated the provisions of section 212.

Section 224 (2) stipulates that the auditor shall make a report on the accounts examined by him and on every balance sheet and profit and loss account and on every other document declared by the Companies Act to be part of or annexed to balance sheet or profit and loss account, which are laid before the company on general meeting during his tenure of office which the profit and loss account is annexed to the balance sheet, the Board's report is only attached to the balance sheet. Hence the auditor of the company is not required to verify the correctness of the particulars furnished in the Board's report in respect of certain employees.

SUMMARY OF EXAMINERS' COMMENTS ON THE PERFORMANCE OF CANDIDATES

PAPER – 1 : ADVANCED ACCOUNTING

General Comments

The performance of the candidates has not been satisfactory. The answers of the candidates showed lack of knowledge and understanding of the subject, specially the accounting standards. Questions requiring practical application of Accounting Standards and Guidance Notes in real life situations have not been answered well. It is also observed that the candidates neglect the theoretical aspects of the subject, they are advised to go through the study material carefully. A thorough practice and lots of reading of the subject is required to maintain the level of knowledge expected from the students of Final Level.

Specific Comments

Question 1. Valuation of goodwill: The answer to this question was not given satisfactorily by most of the candidates. The adjustments for additional information given in the question was not correctly carried out, thereby the average capital employed, future maintainable profits and goodwill were incorrectly worked out. Few candidates failed to understand the leverage effect.

Question 2. Corporate restructuring: The candidates have performed badly in this question. A large number of candidates considered the total value of shares of Y Ltd. for calculating purchase consideration instead of taking 40% of the share value. They did not take into account the value of investments in Y Ltd. while calculating the intrinsic value of shares of X Ltd. Consequently, the number of shares to be issued and the cash to be paid by X Ltd., goodwill and cash balance of X Ltd. after absorption of Y Ltd. was also calculated incorrectly. 10% reduction in the value of fixed assets was also not considered by some of them while computing goodwill.

Question 3. Problems based on practical application of Accounting Standards

(a) AS 11(Revised): Many candidates could not appreciate that the exchange difference at the close of the year should not be adjusted against the raw-materials. Otherwise the question was well answered.

(b) AS 2: This part of the question was well answered by majority of the candidates.

(c) AS 26: Candidates showed lack of knowledge of AS 26 'Accounting for Intangible Assets'. A large number of candidates wrongly opined that the advertisement expenses should be treated as deferred expenses.

(d) AS 4: There was a good attempt by the candidates in this part of the question as compared to other parts. Some candidates were not able to justify their answer with provisions of AS 4.

Question 4.(a) EPS : The candidates have performed unsatisfactorily in this part of the question. The answers of the candidates showed lack of knowledge in this topic.

(b) Determination of maximum bid price: The performance of the candidates, in this part of

the question, was below average. The requirement of the question appeared to be not clear to most of the candidates. Barring few, no one could calculate the maximum bid price. Some of them understood maximum bid price as to mean the highest salary that could be offered.

(c) Calculation of EVA: The candidates exhibited poor knowledge on this topic. Except few, no candidate was able to give correct answer for this part of the question. Most of the candidates calculated the cost of equity capital but they failed to arrive at the debt cost after tax. Consequently, the calculation of EVA was wrong.

Question 5. (a) Computation of diluted earnings: This part of the question was satisfactorily answered by most of the candidates. However, some of them added interest on debentures instead of deducting it from net profit while calculating diluted earnings.

(b) Average capital employed: Most of the candidates calculated the capital employed on 31st March, 2006 correctly. But the calculation of average capital employed was wrong due to incorrect calculation of profit earned during the year. Many of them appeared to be ignorant that half of the profit earned during the year should be adjusted in the capital employed.

Question 6. Holding Company Accounts: Average performance of the candidates was reported by the examiners in this question. Candidates failed to calculate correctly the pre and post acquisition reserve, profit earned after acquisition, pre and post acquisition dividend, revaluation loss and excess depreciation charged. As a result, the computation of minority interest and capital reserve was also wrong. Some candidates erred in the treatment of mutual indebtedness. Most of the candidates did not present the consolidated balance sheet in the prescribed format.

PAPER – 2 : MANAGEMENT ACCOUNTING AND FINANCIAL ANALYSIS

General Comments

The overall performance of candidates was below average. Students lacked adequate preparation. Particularly they were not conversant with theoretical knowledge.

The performance of the candidates in both theory and practical questions was not up to the desired standard. Candidates seem to lack conceptual clarity, analytical ability and communication skills. Candidates did not follow logical and systematic approach for solving the questions. Question nos. were either not written or not written legibly. Answer to each question has not been commenced on a fresh page. Answer to different parts of one question has been written in different places along with answers to other questions.

Specific Comments

Question 1 (a) Many of the examinees were not able to complete the answer to this part of the question correctly. Most of them experienced difficulty in understanding the technicality in the question. Their answers exhibited lack of knowledge in respect of Analysis of Risk and uncertainty in Capital Budgeting. The overall performance of the examinees has been quite dismal.

(b) This part of the question was attempted by many candidates. Their answers however,

exhibited lack of knowledge of Re-financing in some cases. The overall performance was of average level.

Question 2 (a) The performance of the candidates was not satisfactory. Most of them generally calculated correctly market price per share at the end of period but failed to calculate value of the firm. Their answers exhibited lack of knowledge in respect of M.M. approach.

(b) Many candidates could not answer to this part of the question correctly. It appears that they lacked conceptual clarity in Mutual Fund, NAV and its return etc. The overall performance was very poor.

(c)&(d) These theory parts have been attempted fairly by majority. Most of them performed reasonably well.

Question 3 (a) Many examinees were not able to complete the answer to this part of the question correctly. They lacked knowledge in respect of Hedging - forward Contract Currency future etc. The overall performance of the examinees has been quite dismal.

(b) Most of the candidates could not properly answer to this part of the question. Their answers exhibited lack of knowledge of arbitrage possibility/Gain and Loss of Arbitrager. Some of the candidates have solved the problem correctly. However, the overall performance was not upto the mark.

(c) Only a few candidates answered to this part of the question correctly. Most of the candidates made errors in calculation of Risk adjusted dollar rate/Forward rate of exchange for different years. The overall performance was very poor.

Question 4 (a) Many candidates could not answer to this part of the question correctly. It appears that they lacked conceptual knowledge in respect of valuation of call option by application of Black and Scholes model. The performance of them has been quite dismal.

(b) Except few cases, answers were not appropriately organized. Most of answers exhibited lack of knowledge in respect of net exposure of foreign currency.

(c) Most of the candidates who attempted this part of the question have not been able to understand the question and failed to make out what is required in the question. They lacked conceptual knowledge of Portfolio Management.. Their performance was very poor.

Question 5 (a) Most of the candidates could not properly answer to this part of question. Their answers exhibited lack of knowledge in respect of valuation of business on the basis of average of NPV and Aggregate D.C. flows. Some of the candidates answered to this question correctly. However, overall performance was not up to the mark.

(b) This part of the question was well attempted by majority. Their performance was satisfactory.

(c) This theory part of the question has been attempted fairly by majority. Most of them performed reasonably well.

Question 6 (a) Most of the candidates could not properly answer to this part of question. Various kinds of systematic and unsystematic risk were not highlighted fully by most of the

candidates due to lack of proper conceptual knowledge.

(b) Except (iii) of this part of the question. Most of the candidates answered to the question correctly. Their performance was satisfactory.

(c) By and large answers were upto the mark and the candidates were aware of the concepts

(d) The answers of this part of the question were generally not appropriately organized. Most of answers lacked the qualities of presentation. Some of them were writing unnecessary and irrelevant details. The overall performance was poor.

PAPER – 3 :- ADVANCED AUDITING

General Comment

Performance of the Candidates, in general, was satisfactory. However in Q.3(b), 4, 5(a), 7(a)(i) and 8(b), their answers lacked the understanding of the question, its requirement and knowledge of the topics and relevant statute.

Specific Comments

Question1.(a) Generally well attempted by almost all the candidates.

(b) Poor Performance. Candidates in general attempted this part on imagination as if it relates to benefit of company worker or company can't give donation to a political party. Answer lacked the requirement and knowledge of Sec. 293-A.

(c) By and large satisfactory. However only few candidates have written about alternative treatment as deferred income.

(d) Average Performance. Most of the candidates failed to highlight the recourse available to the auditor in terms of AAS 4.

Question .2(a) Well answered and correct judgement of the case. Candidates in general provided good idea of the factors to be evaluated for analyzing the undercutting of fee.

(b) Average Performance. Most of the candidates just mentioned that misstatement should be disclosed separately but failed to highlight the materiality concept.

(c) Generally well answered by almost all the candidates.

(d) Well attempted by majority of the candidates.

Question 3. (a) Average Performance. Only few candidates correctly drafted the audit report. Most of the candidate just mentioned the reporting requirement. Few also highlighted the factors leading to disqualification of directors instead of drafting the report.

(b) Poor Performance. Most of the candidates presented the answer as benefit of computer audit programme and discussed about audit tools. Their answer lacked the understanding of the question.

Question 4. (a) Answered by few candidates with average performance. Most of the candidate just wrote about pollution by and in industry and ways to prevent it.

(b) Poor Performance. Most of the candidates failed to highlight the salient features of directions u/s 619(3). They gave just general answer on verification and vouching of the items.

Question 5. (a) Good Performance. However, most of the candidates mixed the correct answer with non-proprietary element under CARO, 2003.

(b) Average Performance. Most of the candidates failed to mention the important matter to be included in communication as required in the question and instead just highlighted the auditor's duty to communicate.

Question 6. Not attempted by many candidates. Average performance and those answered failed to cover the important areas to be covered in the scope of concurrent audit.

Question 7.(a) (i) Very poor performance. Almost all the candidate took it as a question on requirement u/s.224 & 225.

(a) (ii) Satisfactory performance. Candidates presented a good idea of both internal and external source of obtaining information.

(b) Average Performance. Most of the candidate answered this as non- compliance with true and fair view of the financial statement and accounting standards.

Question 8.(a) Fairly good answer by most of the candidate.

(b) Poorly answered by most of the candidate and their answer just mentioned the general power of auditor and failed to answer the matter to be enquired u/s. 73(2).

(c) Average performance. Answer lacked knowledge of method of calculating the solvency margin and Sec. 64(2C).

(d) Good performance.

(e) Good performance.

(f) Average performance. Many candidates mixed their answer with concept of internal and management audit.

PAPER – 4 : CORPORATE LAWS AND SECRETARIAL PRACTICE

General Comments

Question 1. The performance in general was 'average'. The following were the observations:

(a) Lack of knowledge of the English language.

(b) Lack of writing / drafting skills

(c) Lack of practical application of the sections and relevant case law wherever necessary

(d) Lack of update of the knowledge in the subject

(e) Adequate time should be devoted by the candidates in preparing for the examination.

Specific Comments

Question 1. In relation to question on Company Law, candidates did not refer to Section 309 of the Companies Act, 1956. Also answers did not reflect that the remuneration paid to Dr. Hamilton was not a managerial remuneration and further the requirement of obtaining opinion of the Central Government in rendering is professional service as a heart surgeon is advisable.

In relation to question on Securities Contracts (Regulations) Act, 1956, candidates did not write the conditions to be fulfilled by the stock exchange before issuing an order for delisting the shares of the company. In relation to the question on demutualisation and corporatisation, the specific powers which can be exercised by SEBI in accordance with Section 4(B)(6) and (8) and restrictions which can be imposed on the shareholders was not properly dealt with.

Question 2. Candidates in general, were not adequately prepared on the questions relating to Foreign Exchange Management Act, 1999.

In relation to questions on Competition Act, 2002 answers were generalised and candidates did not state the relevant provisions of the said Act (i.e., Section 15). Some of the candidates wrongly stated that shares before allotment were covered by the term 'goods'.

Question 3. Most of the candidates were not aware of the provisions in the SEBI Act, 1992 and the relevant SEBI (DIP) Guidelines 2000 dealing with price band in a book-building process. The question on the interpretation between Section 292 and 372A of the Companies Act, 1956 were not clearly and correctly brought out.

Question 4. Students lacked the drafting skills in respect of a resolution to be passed for removal of MD. The obligation on specified companies to appoint a Whole Time Company Secretary in accordance with Section 383A of the Companies Act, 1956 and penal consequences were not properly written.

Question 5. Section 297 read with Section 299 and 300 of the Companies Act were not stated by many candidates. Cases in which the interested director shall disclose his contract, the requirement of obtaining clear permission of the Central Government and exemptions under Section 297 were not stated. The meaning of the term 'Misfeasance' was not written correctly by most of the candidates and the scope of proceedings for such acts for misfeasance under Section 543 of the Companies Act was not known to many.

Question 6. The permissible remuneration limits under Section 314 applicable to a director or his relative for holding an office or place of profit and the procedure to be followed were not written by some of the candidates. Further, most of the candidates were not aware that the said section 314 is not applicable to a Managing Director.

Question 7. The problem in relation to the question of oppression as dealt under Section 397 of the Companies Act, 1956 was not properly applied in solving the problem. Drafting resolution for appointment of a Managing Director was not upto the mark.

Question 8. The question pertain to the claim of dissenting shareholders challenging the exchange ratio and the value of shares of two companies proposed to be amalgamated. Candidates did not state the grounds on which their claim is based (i.e., in accordance with

Section 391, 394 and 394A) of the Companies Act, 1956.

Inter corporate loans and investments under section 372A of the Companies Act, 1956 was not properly understood and problem was not solved by many of the candidates.

Question 9. Some of the candidates were not aware of the increased limits in relation sitting fees as per Section 310 of the Companies Act, 1956 read with Rule 10B

The legal position in respect of the obligation on the Indian holding company to attach the balance sheet and other documents of the foreign subsidiary company were not stated properly. Again the provisions of Section 224 (2) of the Companies Act regarding the duty of the statutory auditors is verifying the correctness of the particulars in the Board reports in respect of certain employees was not written clearly.