

## PAPER – 4 : CORPORATE LAWS AND SECRETARIAL PRACTICE

### Updates on Corporate Laws

Students may note that the subject of corporate laws is subject to amendments from time to time and we are sure that the students are keeping abreast of these developments by reading journals, magazines, newsletter etc. From the point of view of the updating their knowledge in the subject and for preparation of the forthcoming examinations, we are giving below the gist of such of those developments in the related statutes.

#### I. New Heights and Highlights of Competition Law

The Competition Act was enacted in 2002 keeping in view the economic development that resulted in opening up of the Indian economy, removal of controls and consequent economic liberalization which required that the Indian economy be enabled to allow competition in the market from within the country and outside. The Competition Act, 2002 provided for the establishment of a Competition Commission, to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India, and for matter connected therewith or incidental thereto.

The Competition Commission of India was established on the 14<sup>th</sup> October, 2003 but could not be made functional due to filing of a writ petition before the Hon'ble Supreme Court. While disposing of the writ petition on the 20<sup>th</sup> January, 2005, the Hon'ble Supreme Court held that if an expert body is to be created by the Union government, it might be appropriate for the Government to consider the creation of two separate bodies, one with expertise for advisory and regulatory functions and the other for adjudicatory functions based on the doctrine of separation of powers recognized by the Constitution. Keeping in view the judgment of the Hon'ble Supreme Court, the Competition (Amendment) Bill, 2006 was introduced in Lok Sabha on the 9<sup>th</sup> March, 2006 and the same was referred for examination and report to the Parliamentary Standing Committee. Taking into account the recommendations of the Committee, the Competition (Amendment) Bill, 2007 was introduced and it received the assent of the President of India on 24<sup>th</sup> September, 2007 as Act No. 39 of 2007.

The Competition (Amendment) Act, 2007, inter alia, provides for the following:-

The Commission shall be an expert body which would function as a market regulator for preventing and regulating anti-competitive practices in the country in accordance with the Act and it would also have advisory and advocacy functions in its role as a regulator;

for mandatory notice of merger or combination by a person or enterprise to the Commission within thirty days and to empower the Commission for imposing a penalty of up to one percent. Of the total turnover or the assets, whichever is higher, on a person or enterprise which fails to give notice of merger or combination to the Commission;

for establishment of the Competition Appellate Tribunal, which shall be a three member quasi judicial body headed by a person who is or has been a judge of the Supreme Court or the Chief Justice of a High Court to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission;

for adjudication by the Competition Appellate Tribunal of claims on compensation and passing of orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the act;

for implementation of the orders of the Competition Appellate Tribunal as a decree of a civil court;

for filling of appeal against the orders of the Competition Appellate Tribunal to the Supreme Court;

for imposition of a penalty by the Commission for contravention of its orders and in certain cases of continued contravention of its orders and in certain cases of continued contravention a penalty which may extend to rupees twenty-five crores or imprisonment which may extended to three years or with both as the Chief Metropolitan Magistrate, Delhi may deem fit, may be imposed.

The Act also aims at continuation of the Monopolies and Restrictive Trade practices Commission (MRTPC) till two years after constitution of Competition Commission, for trying pending cases under the Monopolies and Restrictive Trade Practices Act, 1969 after which it would stand dissolved. The Bill also provides that MRTPC would not entertain any new cases after the Competition Commission is duly constituted. Cases still remaining pending after this two years period would be transferred to Competition Appellate Tribunal or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases.

Student may note that in exercise of powers conferred by sub-section (2) of section 1 of the Competition (Amendment) Act, 2007 (39 of 2007), the Central Government hereby appoints 12<sup>th</sup> day of October, 2007 as the date on which section 1 of the said Act shall come into force.

Student may further note that in exercise of the powers conferred by the proviso to sub-section (2) of section 1 of the Competition (Amendment) Act, 2007 (39 of 2007), the Central Government hereby appoints 12<sup>th</sup> day of October, 2007 as the date on which the following sections of the said Act shall come into force, namely:-

Section 2;

Section 6;

Section 7;

Section 8;

Section 9;

Section 11;

Section 12;

Section 17;

Section 18;

Section 27;

Section 29;

Section 30;

Section 32;

Section 40;

Section 41;

Section 42;

Section 43; except sections 53B, 53C, 53D, 53E, 53F, 53G, 53H, 53I, 53J, 53K, 53L, 53M, 53N, 53O, 53P, 53Q, 53R, 53T, 53U;

Section 44;

Section 45;

Section 46;

Section 47;

Section 48; and

Section 49.

For the full text on the Competition (Amendment) Act, 2007, students may visit [www.competition-commission-india.nic.in](http://www.competition-commission-india.nic.in) or the institutes' website or the Revised Study Material.

## II. The Securities Contracts (Regulation) Amendment Act, 2007

The Securities Contracts (Regulation) Amendment Bill, 2005 was introduced in Lok Sabha on 16.12.2005 and referred to the Standing Committee on Finance on 23.12.2006 for examination and report. The rationale behind the amendment proposals of the Bill, are to enable secondary market liquidity for securitised debt instruments, as furnished by the Ministry are delineated as under:

Under the existing legal framework, Securitisation transactions cannot be listed and traded on stock exchanges as these transactions are not included in the definition of “securities” in the Securities Contracts (Regulation) Act, 1956.

At present, securitization transactions are being structured under Trust law and are transacted among a few financial institutions on private placement basis. Listing and trading on stock exchanges would allow wider participation of investors, both of retail and institutional investors.

In the absence of the facility of trading on stock exchanges, potential buyers of securitized instruments get discouraged by the possibility of having to hold the certificate or instrument in respect of securitisation transactions till maturity. This, in turn, restricts the growth of business of housing finance companies and banks.

The entire institutional, supervisory and regulatory architecture of securities law could be made applicable to securitization transactions also.

1. Investment by institutional investors seek would be possible only when these instruments are eligible instruments for investment which in turn requires an active secondary market and appropriate regular disclosure about the quality of assets including recovery mechanism in case of default. The institutional participation would help in further developing the securitized debt market.

2. What is Securitization?

Securitisation is a form of financing involving pooling of financial assets and the issuance of securities that are re-paid from the cash flows by the assets. This is generally accomplished by actual sale of the assets to a bankruptcy remote vehicle, that is, a special purpose vehicle, which finances the purchase through the issuance of bonds. These bonds are backed by future cash flow of the asset pool. The most common assets for securitisation are mortgages, credit cards, auto and consumer loans, student's loans, corporate debt, export receivables, off-shore remittances, etc.

3. What are the advantages of securitization?

Besides other advantages, securitisation

- (a) allows banks and financial institutions to keep these loans off their balance-sheet, thus reducing the need for additional capital;
- (b) provides the banks and financial institutions with alternative forms of funding risk transfer, a new investor base, potential capital relief and capital market development;
- (c) can reduce lending concentration, improve liquidity and improve access to alternate sources of funding for banks and financial institutions;

- (d) facilitates attainment of funding at lower cost as a result of isolating the assets from potential Bankruptcy risk of the originator;
- (e) facilitates better matching of assets and liabilities and the development of the long-term debt market;
- (f) provides diversified pools of uniform assets; and
- (g) has the advantage of converting non-liquid loans or assets which cannot, be easily sold to third party investors into liquid assets or marketable securities. Lower funding costs are also a result of movement of investments from less efficient debt markets So more efficient capital markets through the process of securitisation.

4. What is the legal framework for securitization in India?

In India, the securitisation market remains underdeveloped. Although two major legislative initiatives, namely, (a) the amendment to the National Housing Bank Act, 1987 (NHB Act) in the year 2000; and (b) the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (SARFAESI Act), have been taken, the market has not picked up because of the absence of the facility of trading on stock exchanges, The potential buyers get discouraged by the possibility of having to hold the certificate or instrument in respect of Securitisation transactions till maturity. This, in turn, restricts the growth of business of housing finance companies and banks. The Securitisation transactions under the NHB Act are not covered under the definition of "securities" under the SCR Act. As such, trading in certificates or instruments relating to such transactions cannot take place on stock exchanges and buyers of such securitised financial certificates or instruments are left with few exit options. Under the SARFAESI Act, while "security receipts" have been covered under the definition of "securities", the provisions of the said Act restrict sale and purchase only amongst qualified institutional buyers. Besides, the "security receipts" under the SARFAESI Act can be issued only by a Securitisation company or a reconstruction company registered with the Reserve Bank of India. This obviously limits the interest in such receipts and the market has not taken off at all. Keeping in view the potential of the securities market for the certificates or instruments under Securitisation transactions, international trends and consultations held with major institutional participants and market experts it was decided to amend the SCR Act, 1956. inter alia.—

- (i) include Securitisation certificate or instrument under the definition of "securities" and to insert for the said purpose, a new sub-clause (i.e.) in clause (h) of section 2 of the SCR Act, 1956;
- (ii) to provide for obtaining approval from the Securities and Exchange Board of India for issue of the proposed certificate or instrument and procedure therefore and insert for the said purpose a new section 17A in the SCR Act, 1956; and
- (iii) to provide for the manner in which contents of such certificate or instrument, being the securities" and acknowledging beneficial interest shall be disclosed.

5. The following Act of Parliament received the assent of the President on the 28th May, 2007 and the amendments are

Amendment of section 2.

In section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereinafter referred to as the principal Act), in clause (h), after sub-clause (id), the following sub-clause shall be inserted, namely:-

"(i.e.) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case maybe;".

Insertion of new section 17A.

After section 17 of the principal Act, the following section shall be inserted, namely:-

"Public issue and listing of securities referred to in sub-clause (i.e.) of clause (h) of section 2.

17 A. (1) Without prejudice to the provisions contained in this Act or any other law for the time being in force, no securities of the nature referred to in sub-clause (i.e.) of clause (h) of section 2 shall be offered to the public or listed on any recognised stock exchange unless the issuer fulfils such eligibility criteria and complies with such other requirements as may be specified by regulations made by the Securities and Exchange Board of India.

(2) Every issuer referred to in sub-clause (i.e.) of clause (h) of section 2 intending to offer the certificates or instruments referred therein to the public shall make an application, before issuing the offer document to the public, to one or more recognised stock exchanges for permission for such certificates or instruments to be listed on the stock exchange or each such stock exchange.

(3) Where the permission applied for under sub-section (2) for listing has not been granted or refused by the recognised stock exchanges or any of them, the issuer shall forthwith repay all moneys, if any, received from applicants in pursuance of the offer document, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director or trustee thereof, as the case may be, who is in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent. per annum.

Explanation.- In reckoning the eighth day after another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881, (26 of 1881) shall be disregarded, and if the eighth day (as so reckoned) is itself such a public holiday, there shall for the said purposes be substituted the first day thereafter which is not a holiday.

(4) All the provisions of this Act relating to listing of securities of a public company on a recognised stock exchange shall, mutatis mutandis, apply to the listing of the securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 by the issuer, being a special purpose distinct entity."

Amendment of section 23.

In section 23 of the principal Act, in sub-section (1), in clause (c), for the word and figures "section 17", the words, figures and letter "section 17 or section 17A" shall be substituted.

Amendment of section 31.

In section 31 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

- (a) the manner, in which at least fifty-one per cent. of equity share capital of a recognised stock exchange is held within twelve months from the date of publication of the order under sub-section (7) of section 4B by the public other than the shareholders having trading rights under subsection (8) of that section;
- (b) the eligibility criteria and other requirements under section 17 A."

III. Amendments to SEBI (Disclosure and Investor Protection) Guidelines, 2000.

SEBI/CFD/DIL/DIP/30/2008/17/03, March 17, 2008

1. In exercise of the powers conferred under sub-section (1) of Section 11 of the Securities and Exchange Board of India Act, 1992, it has been decided to amend the SEBI (Disclosure and

Investor Protection) Guidelines, 2000 as under:

## CHAPTER II

### ELIGIBILITY NORMS FOR COMPANIES ISSUING SECURITIES

In sub-clause (v) of clause 2.2.2B, after sub-clause (k), the following sub-clause shall be inserted, namely:-

"l. National Investment Fund set up by resolution F. No. 2/3/2005-DD-II dated November 23, 2005 of Government of India published in the Gazette of India."

2. The amendments made vide this circular shall come into force with immediate effect.

3. This circular and the entire text of the SEBI (Disclosure and Investor Protection) Guidelines, 2000, including the amendments issued vide this circular, are available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework" and "Issues and Listing".

## QUESTIONS

## COMPANIES ACT, 1956

1. A Company Ltd. recently went in for public issue of equity shares and for this purpose it paid brokerage to a share broking firm in which one of the directors of the company is the partner in the said firm. State, in this connection whether the concerned director should disclose his interest in the firm to the company? What would be the position if the company already knew the fact?
2. (a) A director of a public company has taken a loan of Rs.10 lakhs from the company without the approval of the Central Government. He seeks your opinion on the following matters:
  - (i) Is it possible to avoid prosecution by applying to the government for approval or by refunding the loan?
  - (ii) Whether the offence is compoundable before or after Institution of prosecution and the authority who can compound the offence.
- (b) When is a company called a foreign company and a foreign controlled company? What legal requirements under the Companies Act, 1956 is a foreign company wishing to establish a place of business in India required to comply with relating to delivery of documents to the Registrar of Companies?
3. Future Private Limited approached you seeking your opinion on the following appointment relating to Directors and their relatives.
  - (i) Appointment of Mr. John (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. Tony (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.
4. The Board of Directors of Excellent Ltd. wants to adopt a system of appointing directors to the Board once in every three years. Is such a system of appointment permissible under the Companies Act, 1956? If so, what would be your advice to the Board in following such a system, by giving an illustration to the method of its implementation.
5. MN Ltd. and AB Ltd. entered into a scheme of amalgamation by which AB Ltd. would transfer its entire undertaking to MN Ltd. However, the Central Government raised an objection that unless the objects clause of the companies are similar, and memorandum empowers to do so, the scheme of amalgamation cannot be permitted. Is the contention of the Central Government correct?

6. A public company is contemplating setting up an Audit Committee as a part of good corporate governance. Advise the company on the Constitution, Composition, Terms of Reference and the Role of Audit Committee. In your opinion, whether setting up of such an Audit Committee is supplementary or complimentary to the Board.
7. (a) 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.
- (b) Mohan & Company was appointed as auditor of MNP Ltd. at the Annual General Meeting held on 30<sup>th</sup> September, 2006. Can Mohan & 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 29<sup>th</sup> September, 2007, but adjourned without considering the business of appointment or re-appointment of auditor?
8. M/s Prakash Ltd. had power under its memorandum to sell its undertaking to another company having similar objects. The Articles of the company contained a provision by which directors were empowered to sell or otherwise deal with the property of the company. The Shareholders passed an ordinary resolution for the sale of its assets on certain terms and required the directors to carry out the sale. The Directors refused to comply with the wishes of the shareholders where upon it was contended on behalf o the shareholders that they were the principal and directors being their agents were bound to give effect to their decision. Based on the above facts, decide the following issues, having regard to the provisions of the Companies Act, 1956 and case laws.
  - (i) Whether the contention of shareholders against the non-compliance of their wishes by the directors is tenable.
  - (ii) Can shareholders usurp the powers which by the articles are vested in the directors by passing a resolution in the general meeting?
9. Mr. Ranjeet has been appointed as a director in a Public Limited Company? Referring to the provisions of the Companies Act, 1956 state:
  - (a) Whether the director should possess any share qualification?
  - (b) If so what is the number of share(s), which he should acquire and at what value?
  - (c) Whether the articles of the company can insist on the director for compulsory acquiring of share qualification?
10. Mr. M is the Managing Director of M/s. XYZ Ltd. and also ABC 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. M as the Managing Director of PQR Limited.

11. (a) A majority of the Board of Directors of M/s Value Creation Ltd. have realized that some of the business activities carried out in the name of the company are not in the interest of either the company or its members. they want that the company should make an application to the Central Government to appoint an Inspector to carry out an investigation so as to find out the whole truth. Explain the steps that should be taken to achieve the purpose and draft the application.
- (b) Some of the shareholders of M/s High Tech Information Ltd. are contemplating penal action against the Company and its directors for not posting dividend warrants even though the company declared a dividend of 50% on its equity share a couple of months earlier. Examine the inability of the Company and its Directors for the said non-compliance. Also examine whether any defence can be raised by them against the liability.
12. (a) The articles of association of a company fixed three as the quorum for the meeting of the Board. At the meeting of the Board, all the five directors were present. They allotted the shares of the company to three of the directors. Is it valid?
- (b) A meeting of the Board of Directors of a company was convened to be held on 19<sup>th</sup> December, 2008, but the meeting could not be held for want of quorum. The last meeting of the Board of Directors was held on 20<sup>th</sup> August, 2008. Advise.
- (c) By an oversight, a notice of the meeting of the Board was not sent to one of the directors who was in India. Is the meeting valid?
- (d) A member wants to inspect the Minutes Book of the meeting of the Board. Advise.
13. Is a director bound to attend all the meetings of the Board? What would be the position under the Companies Act, 1956 in respect of a director who did not attend or absents himself from three consecutive meetings of the Board or from all meetings of the Board without obtaining leave of absence?
14. M/s. Prakash 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. Prakash Enterprises Private Limited. Mr. Prakash 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. Prakash Enterprises Private Limited were a public company;
- (ii) M/s. Prakash Limited were carrying on real estate business and it proposes to sell a flat to M/s. Prakash Enterprises Private Ltd. for Rs. 50 lakhs?

15. In the context of provisions of the Companies Act, 1956 and case laws if any, answer the following:
- (a) Amalgamation of a foreign company with an Indian company.
  - (b) Is the scheme of amalgamation requires approval by preference shareholder?
  - (c) When will Court order dissolution of the transferor company?
16. M/s. City Hospital Private Ltd. has two groups of Directors. A dispute arose between the two groups out of which one group controlled the majority of shares. A very serious situation arose in the administration of the company's affairs when the minority group ousted the lawful Board of Directors from the possession and control of the management of the company's factory and workshop. Books of account and statutory records were held by the minority group and consequently the annual accounts could not be prepared for two years. The majority group applied to the company law board for relief under sections 397 and 398 of the Companies Act. You are required to decided with reference to the provisions of the said Act, the following issues:
- (i) Can majority of shareholders apply to the Company Law Board for relief against the oppression by the minority shareholders?
  - (ii) Whether Company Law Board can grant relief in such circumstances.
17. With reference to the relevant provisions of the Companies Act, 1956, advise the company on the matters relating to sending of Notices of Board meetings:
- (a) Mr. A, a director states that he will not be able to attend next Board meeting.
  - (b) Mr. B, goes abroad for 5 months and an alternate director has been appointed in his place.
  - (c) Mr. C, is a director residing abroad representing the foreign collaborator and articles of Association of the company provides for sending notice to such directors.
18. The Annual General Meeting of M/s Excellent Ltd., for laying the Annual Accounts thereat for the year ended 31<sup>st</sup> March, 2007 was not held, as the accounts were not ready. In this context:
- (i) Advice the company regarding compliance of the provisions of Section 220 of the Companies Act, 1956 for filing of copies of Annual Accounts with the Registrar of Companies.
  - (ii) Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 26<sup>th</sup> September, 2007 but the same were not adopted by the shareholders?
19. (i) What is the liability of an auditor for failure to point out in his report that dividend is paid out of sale of the company's real estate?
- (ii) Can an auditor be disqualified for indebtedness in the following cases?

- (a) where he is recovering his fees on a progressive basis even though the job is not complete;
  - (b) Where the auditor's firm has purchased goods from the auditee company and not paid for them for six months?
20. Mr. Smith, 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. 1.4.2008 in the last Annual General Meeting of the company.
- Mr. Smith 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. Smith 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?

#### FOREIGN EXCHANGE MANAGEMENT ACT, 1999

21. (a) Who is repatriate to India?
- (b) Who is an authorised person? What are the powers of RBI to regulate such authorised person?
22. Briefly state the obligations and time limits by which adjudication and appeal to be completed under FEMA, 1999. Also state the procedure for appealing to and powers of Appellate Tribunal?
23. Mr. Krishna, born and brought up in India, goes to USA on 10.4.2007 to look after his son, Amit, who is suffering from chronic disease, with the intention to stay over there till his son, Amit recovers completely. Determine his residential status under the Act for the financial year 2007-2008 and 2008-2009.

#### SEBI, ACT, 1992

24. State in brief the SEBI guidelines to the following:
- (a) Differential pricing.
  - (b) Pre-issue obligations with reference to documents to be submitted along with offer document by lead manager.
  - (c) Stock market data.
  - (d) Promise Vs. Performance.
  - (e) Reservation for small individual application.
  - (f) Guidelines on advertisements.

- (g) Guidelines on 100% Book Building Process.(100% or 75% route)
25. What are the SEBI Guidelines on initial public offers through stock exchange on-line system (E-IPO)?
26. What are the penalties prescribed in respect of the following:
- (a) For failure to furnish information, return, etc.,
  - (b) For failure by any person to enter into agreement with clients.
  - (c) For failure to redress Investors' Grievances.
27. (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.

#### SCRA, 1956

28. Define the following:
- (a) "Option in securities
  - (b) "Spot delivery contract"
  - (c) "Title to Dividend"
29. What are provisions contained in the Securities Contract (Regulation) Act, 1956 in relation to listing of securities, Refusal of Listing, Appeal against refusal to list and powers of SAT?
30. What are the conditions that are laid down for granting of recognition to the Stock Exchanges under the Act?

#### COMPETITION ACT, 2002

31. Briefly state the procedure to be followed for investigating adverse effect of combination under the Act.
32. What is the composition of the Competition Commission of India?

#### SUGGESTED ANSWERS/HINTS

1. According to Section 297 of the Companies Act, 1956, a director of the company or his relative, a firm in which such a firm or a private company of which the director is a

member or director, must not enter into contracts with company for the sale, purchase, or supply of goods, materials or services or for underwriting shares or debentures except with the consent of the Board of Directors [Sub-section (1)]. If the company is having a paid-up capital of Rs.1 crore or more no such contract shall be entered into except with the previous approval of the Central Government. The consent of the Board is deemed to have been given only if it is accorded by a resolution of the Board and not otherwise, either before or within three months of the date of entering into the contract. [Sub-Section (4)].

In view of the legal position as stated above, the appropriate brokerage can be paid to the broking firm if the contract had been entered into with the consent of the Board of Directors of X & Co. Ltd. The director in question is to disclose his concern or interest at the first meeting of the Board meeting held after the director becomes concerned or interested in the contract. A general notice given in this regard to the Board is deemed to be sufficient disclosure of his concern or interest, if either it is given at the meeting of the Board of directors concerned or he takes reasonable steps to ensure that it is brought up and read at the first meeting of the Board after it is given.

The terms 'disclosure' means to make others aware of something which they are not aware. The disclosure of interest by a director has been provided in Section 299 only with a view to know that the director occupies a fiduciary position in the company should disclose his interest in any arrangement or contract either directly or indirectly so that the company or for his own benefit. When the board is aware of the fact of the interest of a director in a particular transaction, it would not be necessary for such a director to formerly disclose his interest. [Ramakrishna Rao v. Bangalore Race Club, 40, The Companies Act, 1956. Case 6741 (Mysore). A Sivasailam v. Registrar of Companies [C.A. No. 11/621A/SRB/94 decided on 31.5.94 (CLB)].

2. (a) (i) According to Section 295 of the Companies Act, no public company shall make any loan to any of its directors either directly or indirectly without obtaining the previous approval of the Central Government. As the Act envisages prior approval, Central Government will not entertain any application from the company seeking approval for a loan already given to its directors.

The company has, therefore, contravened the provisions of Section 295(1) and for this offence every person who is knowingly a party to this contravention including the person to whom the loan is made shall be punishable either with fine which may extend to Rs.5,000 or with simple imprisonment for a term which may extend to six months [Section 255(4)]. Where any such loan has been repaid in full, no punishment by way of imprisonment shall be imposed and where the loan has been repaid in part, the maximum punishment which may be imposed by way of imprisonment shall be proportionately reduced. So, by refunding the loan in full, it is possible to avoid punishment in the form of

imprisonment, but it is not possible to avoid prosecution and punishment in the form of fine.

- (ii) All offences other than an offence which is punishable under the Companies Act with imprisonment only or with imprisonment and also with fine are compoundable under Section 621A. As the offence under Section 295 is punishable with fine or imprisonment, it is compoundable but with the permission of the court [Section 621A(2)]. The offence may be compounded either before or after the institution of prosecution. If the offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder or by any person authorised by the Central Government. Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought to the notice of the court by the Registrar in writing and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged [Section 621A(4)].

The offence may be compounded by the Regional Director where the maximum amount of fine which may be imposed for such offence does not exceed Rs.5,000 and in other cases by the Company Law Board. In this case, the offence may be compounded by Regional Director, as the maximum fine is only Rs.5,000. On receipt of applications from the persons liable for penalty under Section 295(4) along with the comments of the Registrar, the Regional Director may specify the amount not exceeding the maximum fine which shall be paid to the Central Government for compounding of the offence.

- (b) Foreign Company: A foreign company means a company incorporated outside India and having a place of business in India; whatever be the pattern, of their holding. However where not less than 50% paid up capital of foreign company is held by one or more citizens of India or by one or more bodies corporate incorporate in India, whether singly or in aggregate, such company shall comply with the provisions of the Companies Act, 1956, as if it were a company incorporated in India. A 'foreign controlled company' however, means a company in which the majority shareholding and voting power is in the hands of foreign individuals and/or bodies corporate.

Filing of Returns and Documents (Sections 592 & 593) : Foreign companies which establish a place of business in India must within one month from that date file with the Registrar,

- (a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument defining its constitution with a certified translation of the documents in the English language if they are not in that

language. Rule 16 of the Central Government's General Rules, 1956 specifies the persons who are to certify the documents,

- (b) the full address of the registered or principal office of the company,
- (c) a list of directors giving with respect to each of the directors who are individuals, his name and surname, former name and surname, usual residential address and nationality.
- (d) the present name and surname, former name and surname and usual residential address of the secretary if he is an individual and if a body corporate its corporate name and its registered or principal office and if a firm the partners of which are joint secretaries, the name and principal office of the firm.
- (e) the names, addresses of persons resident in India and authorised to accept service of documents, notices and processes on behalf of the company, and
- (f) the address of the principal place of business in India (Section 592).

The other category of foreign companies, namely, companies which have already established a place of business in India, have to file the documents and particulars in accordance with the provisions of Section 277(1) of the Companies Act, 1956, if they have not already done so. [Section 592(4)].

A foreign company should deliver to the Registrar within the prescribed time a return containing particulars of any changes or alterations in any of the particulars mentioned above (Section 593). Rule 17 of the Central Government's General Rules, 1956 prescribes the time within which the particulars of alterations are to be filed.

3. 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 5<sup>th</sup> 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. John 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. John 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. Tony 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.
- 4. Appointment by proportional representation: The articles of a public company or a private company which is subsidiary of a public company may adopt the principal of proportional representation for appointing not less than 2/3<sup>rd</sup> if the total number of the directors, whether by a single transferable vote or by a system of cumulative voting or otherwise. In such a case, appointments will be so made once in every three years and interim casual vacancies will be filled in conformity with the provisions of Sections 262 and 265. Cumulative voting denotes that if there are five candidates or distributes his five votes. He can cast all the five votes in favour of one candidate or distribute his five votes among different candidates. This system of voting ensures that the Board will have fair representation of the minority interest.
- 5. The power to amalgamate may flow from the memorandum or it may be acquired by resorting to the statute. Section 17 of the Companies Act, 1956 indicates that a company which desires to amalgamate with another company will take necessary steps to come before a court for alteration of its memorandum in aid of such amalgamation. The statute confers a right on a company to alter its memorandum in aid of amalgamation with another company. The provisions contained in sections 391 to 396 and 494, illustrate instances of statutory power of amalgamating a company with another company without any specific power in the memorandum. [Hari Krishna Lokia (v) Hoolungooree Tea Co. Ltd, 1996].

Section 391 is not only a complete code, but it is in the nature of a single window clearance system to ensure that parties are not put to avoidable, unnecessary and cumber some procedure for making repeated applications to court for various alterations and changes. What is to be seen is the over all fairness mid feasibility of scheme of amalgamation and there need not be any 'unison of objects of both transferor and the transferee company. [R Morarjee Goku/das spg. & wrg. Co., 1995].

To amalgamate with another company is the power of the company and not an object of the company. [Re. Hari Krishna Lohia, 1996]. Irrespective of the objects clause, the court is empowered to sanction scheme of amalgamation provided it does not prejudice the interest of the public. Therefore, based on the above judicial rulings, the contention of the central government is not correct. [Golkunda Engg. Enterprises Ltd (v) the G. V. Ltd, 1997J.

6. Section 292A of the Companies Act, 1956 relating to Audit Committee provides for the following in relation to constitution, composition etc.
  - (1) Every public company having paid-up capital of not less than five crores of rupees shall constitute a committee of the Board known as "Audit Committee" which shall consist of not less than three directors and such number of other directors as the Board may determine of which two-thirds of the total number of members shall be directors, other than managing or whole-time directors.
  - (2) Every Audit Committee constituted under sub-section (1) shall act in accordance with terms of reference to be specified in writing by the Board.
  - (3) The members of the Audit Committee shall elect a chairman from amongst themselves.
  - (4) The annual report of the company shall disclose the composition of the Audit Committee.
  - (5) The auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote.
  - (6) The Audit Committee should have discussions with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review the half-yearly and annual financial statements before submission to the Board and also ensure compliance of internal control systems.
  - (7) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary.
  - (8) The recommendations of the Audit Committee on any matter relating to financial management, including the audit report, shall be binding on the Board.
  - (9) If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefore and communicate such reasons to the shareholders.
  - (10) The chairman of the Audit Committee shall attend the annual general meetings of the company to provide any clarification on matters relating to audit.

- (11) If a default is made in complying with the provisions of this section, the company, and every officer who is in default, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both."
7. (a) 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.

- (b) 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 Mohan & Co. can continue as auditor even if the AGM for the year 2007 has not been held in time.

In case AGM for 2007 was held on 29.9.07 that adjourned without considering the business of appointment or reappointment of auditor, the tenure of Mohan and Co. will extend till the conclusion of the adjourned meeting.

8. General Powers vested in the Board of Directors: The provisions relating to the general powers which are vested are given under Section 291 of the Companies Act, 1956. As per this section, the Board of Directors of a company is entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do. This means the powers of the Board of Directors are co-extensive with those of the company. The proposition is, however subject to two conditions:

Firstly, the Board shall not do any act which is to be done by the company in general meeting.

Secondly, the Board shall exercise all such powers subject to the provisions contained in the Companies Act, 1956 or in the Memorandum or the Articles of the Company or in any regulations made by the Company in general meeting. But no regulation made by the

company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

It is the first and elementary principle of company law that when powers are vested in the Board of directors by the Articles of a company, they cannot be interfered with by the shareholders as such (*Murarka etc. Works Ltd. Vs. Mohal Lal AIR (1961) Col 251*).

In exercising their powers the directors do not act as agent for the majority members or even all the members. The members therefore cannot by resolution passed by a majority or even unanimously supersede the powers of directors or instruct them how they shall exercise their powers. The above problem is based on decision given by the Chancery Court in the case *Automatic Self Cleansing Filter Syndicate Co. Ltd. Vs. Cunninghame (1906) 2Ch 34* and this case also followed in India in *MPLV Works Vs Murorka AIR 1961 Col 251*.

In view of above discussion, the contention of shareholders against the non-compliance of their wish by the directors is not tenable and shareholder cannot usurp the power which by articles vested in the directors by passing even a resolution of a numerical majority at the general meeting cannot impose its will upon directors when the articles have codified to them the control of the affairs of the Company.

9. **SHARE QUALIFICATION FOR DIRECTORS:** It is that number of shares which a shareholder must hold in order to be eligible for election as a director. The Companies Act, 1956 does not prescribe for any share qualification for a director. However, Regulation 66 of Table A provides that the qualification for being a director of a company is the holding of at least one share in the company. The articles of a company usually prescribe for such qualifications so that a director has a personal interest in the company. In the event of such a provision by the articles, it becomes incumbent on the part of every director to hold qualification shares and if does not hold them at the time of his appointment as director, he must acquire them within two months after his appointment as director. Any provision, made in the articles of the company requiring a person proposed for directorship to hold qualification shares either before appointment or within a period shorter than two months after his appointment will be void. The nominal value of qualification shares must not exceed Rs. 5,000 and if the nominal value of each share is Rs. 5,000 or more than the number of shares prescribed, as qualification will be only one. It is, of course, not necessary for any company to insist upon the holding of shares for the purpose of qualification for directors. For the purpose of share qualification, the bearer of a share warrant is not deemed to be the holder of the shares mentioned in the warrant (Section 270). A Director acting without qualification shares is punishable with fine, which may extend to Rs. 500/- for every day during which he continues as director (Section 272). The provisions relating to the share qualification of a director do not apply to a private company, unless it is subsidiary of a public company

(Section 273): nor do they apply to directors appointed by the Central Government under Section 408.

10. 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. M 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. M who is already the Managing Director of two companies, namely M/s XYZ Ltd. and M/s ABC Ltd., be and is hereby appointed as Managing Director of the

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 S, the Secretary of the company be and hereby authorized to apply to the Central Government for seeking their approval."

"Resolved further that Shir D, Director and Shri S, 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".

- 11. (a) According to Section 237 of the Companies Act, 1956, the Central Government shall appoint one or more persons as inspectors to investigate the affairs of the company if the company by a special resolution or the court by an order declares that the affairs of the company should be investigated. The Central Government may also appoint an inspector if in the opinion of the Company Law Board, there are circumstances suggesting that:
  - (i) the business of the company is being conducted with intent to defraud creditors, members or any other persons.

- (ii) the persons concerned in the formation of the company or the management of its affairs have been guilty of fraud, misfeasance or misconduct towards the company or its members.
- (iii) the members have not been given all information with respect to its affairs.

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

Draft Application:

Value Creation Ltd. (Address)

Dated 1<sup>st</sup> April, 2006

The Secretary,  
Department of Company Law Affairs,  
New Delhi

Sir,

At a meeting of the shareholders of the company, the members have passed the

following special resolution unanimously:

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

"(Name a couple of activities)"

The said unanimous resolution was passed at an extraordinary general meeting of the Company held on 10<sup>th</sup> March, 2006.

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

The Challan evid as per the companies (Fees on Application) Rules, 1989 is enclosed.

Your respectfully,

For and on behalf of Value Creation Ltd.

Secretary.

- (b) According to Section 207 of the Companies Act, 1956, as amended where a dividend has been declared by a company, but has not been paid or the dividend warrant has not been posted within 30 days from the date of declaration, to the shareholders, every director of the company shall if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to a fine of Rs. 1,000/- per day during which such default continues. The company is liable to pay simple interest at 18% per annum during the period for which such default continues. Thus the shareholders of M/s High Tech Information Ltd. can take penal action against the company and its directors as provided in Section 621 of the Act, (i.e., by filing a complaint in the Court having jurisdiction over the company).

The company and its directors can raise the following defences in case of a prosecution:

- (a) the dividend could not be paid by reasons of the operation of any law.
  - (b) where the shareholder has given a director to the company regarding payment of dividend and the same cannot be complied with.
  - (c) there is a dispute regarding the right to receive the dividend.
  - (d) the dividend has been lawfully adjusted by the company against the dues from the shareholders.
  - (e) for any other reason, the non-posting was not due to any default on the part of the company.
12. (a) The provisions in regard to quorum for a Board meeting are contained in Section 287 of the Companies Act, 1956. It is provided therein that the quorum for a Board meeting shall be one-third of the total number of directors of a company (any fraction contained in that one-third shall be rounded off as one) or two directors which ever is higher. It is further provided that where at any time the number of interested directors exceeds or is equal to two-third of the total strength, the number of disinterested directors present at the meeting being not less than two shall form the quorum. The company is, however, free to fix a higher quorum for the Board meeting.

Viewed in the context of the above provisions, the company has fixed the quorum for a Board meeting at 3. In this case, out of five directors present at the meeting,

the number of interested directors is three. As such, the remaining two directors who are not interested do not constitute a quorum and hence the meeting cannot be validly convened. Therefore, the allotment of shares at the aforesaid meeting is not valid (Re: Sir Hormusji & Wadia AIR 1921 Bom. 372).

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

- (b) As per Section 288, of the Companies Act, 1956 if a meeting of the Board could not be held for want of quorum, then unless the articles provide otherwise, the meeting shall automatically stand adjourned to, the same day in the next week, at the same time and place or if that day is a public holiday till the next succeeding day which is not a public holiday. Sub-section (2) of Section 288 further provides that the provisions of Section 285 shall not be deemed to have been contravened merely by reasons of the fact that meeting of the Board which has been called in compliance with the terms of that section, could not be held for want of quorum.
  - (c) According to Section 286 of the Companies Act, 1956, notice of every meeting of the Board shall be given in writing to every director in India and to his usual address in India. As this is a compulsory requirement, failure to do so will make the meeting and resolution passed at the meeting null and void. [Kuldeep Singh Dhillon v. Paragon Utility Financiers (P) Ltd. (1988) 60 The Companies Act, 1956. Cas. 77 (P&H)].
  - (d) The Companies Act contains no provisions either specifically permitting or prohibiting inspections by shareholders of the minutes of the meeting of the Board. As per the letter issued by the department, unless the Articles of Association provide to the contrary, a shareholder has no right of inspection or of taking copies of the minutes of the Board meetings.
13. No, he is not so bound. But nonetheless he will be guilty of breach of duty if he fails to attend the Board meetings with reasonable regularity without sufficient cause being shown for non-attendance. Willful non-attendance on his part may give rise to his liability of ground of negligence if it is patently prejudicial either to the company or to the general body of shareholders. Fairly, frequent absence from the Board meeting may however, be excused if the entire control is exercised by a single director or if the Board is pretty large in number [Re. Denham & Co. D25 Ch. D. 752; Marquis of Bute's case (1892) 2 Ch. 100]. The fewer the directors, the more onerous is the duty to attend.

Although a director need not attend each Board meeting unless the articles provide otherwise, yet his continuous non-attendance say two attendances followed by two non-attendances, again followed by one attendance and so forth just by way of a guard

against infringement of provision of Section 283(1)(g) may render him guilty of breach of trust which may be committed by other directors.

It is true that Section 285 does not prescribe any penalty for non-compliance with the requirements of the Section. Nevertheless, Section 622A may be invoked to deal with such a situation.

14. 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. Prakash 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. Prakash 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 Prakash 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 Prakash 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.
15. (a) In *Bombay Gas Company (P) Ltd., vs. Central Government* (1997) (CC) 89, the Bombay High Court held that Section 394(4)(b) provides for amalgamation of a foreign company with the Indian company. The transferee company, however, cannot be a foreign company.

- (b) The expression member is not only holders of equity shares but also preference shareholders who had to be taken into account and value of their shares be included.
  - (c) The scheme may provide for the dissolution without winding up of any transferor company [Section 394(i)].
16. (i) Remedy available to majority shareholders also:

The case stated in the question relates to the provisions of sections 397 and 398 of the companies Act, 1956 with regard to remedy available to majority shareholders. Where the majority is prevented from protecting itself by controlling the directors at general body meetings, the majority becomes an artificial minority entitled to claim protection under Section 397 and 398 (V. Sebastean, Dr V City Hospital (Pvt.) Ltd. (1985) 57 Comp. case 453 (Ker)] Thus the remedy under Section 397 and 398 is confined not to an oppressed minority of the shareholders alone; an oppressed majority may also apply to the Company Law Board against their oppression from the side minority shareholders. In Sindhri Iron Foundry (Pvt.) Ltd. Re (1963) 78 E. to N. 118, issue and allotment of a number of shares in a company whereby an admitted majority of shareholders was reduced to a minority was struck down. While granting relief to a majority group, Mitra J observed in their case;

"If the Court (now the Company Law Board) finds that the company's interest is being seriously prejudiced by the activities of one or the other group of shareholders, that two different registered offices at two different addresses have been set up, that tow rival boards are holding meetings, that the company's business property and assets have passed into hands of unauthorized persons who have taken wrongful possession and who claim to be the shareholders and directors, there is no reason why the Court (now the company Law Board) should not make appropriate orders to put an end to such matters".

- (ii) Relief by the Company Law Board: The Company Law Board may give relief if its is of opinion:
  1. that the company's affairs are being conducted (a) in a manner prejudicial to public interest, or  
(b) in a manner oppressive to any member or members;
  2. that the facts justify the compulsory winding up order on the ground that it is just and equitable that the company should be wound up;
  3. that to wind up the company would unfairly prejudice the applicants.

On being satisfied about the above requirements, the Company Law Board may pass such order as it thinks fit with a view to bring an end to the matters complained

of this provision would help salvage an otherwise sound concern which would have been, but for this principle, forced to into winding up.

17. According to Section 286 of the Companies Act, 1956, notice of every board meeting shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.
  - (i) Notice should be given even if Mr. A expressed his inability to attend the next board meeting. Otherwise, Section 286(1) will be violated. [In re: Portuguese Consolidated Copper Mines Ltd. (1889) 42, Ch.D 160(CA). It is also worthwhile to mention in this connection that in Parmeshwari Prasad Gupta vs. Union of India, AIR 1973 SC 2389, the Supreme Court held that if the director who has not been given notice attends the subsequent meeting and confirms the proceedings of the previous meeting, it amounts to ratification and validates the resolutions passed at the previous meeting.
  - (ii) Although there is no legal precedent in this regard, it would be a prudent practice (under Section 286) that notice should be served to both, the alternate director as well as the original director Mr. B who is outside of India at his usual address in India.
  - (iii) In the case of a company having foreign collaboration, Articles generally provide that notice of Board Meeting should be sent by Air Mail. But a question crops up whether such provision is valid, as Section 286(1) requires service of such notice to a director to be sent as his usual address in India. However, it must be admitted that the question is not free from doubt and in the instant case as, Articles provide that notice must be sent to Directors residing abroad, notice should be sent to Mr. C.
18. Under Section 220(1) of the Companies Act, 1956, after the balance sheet and profit and loss account have been laid before the AGM, three copies thereof be filed with the Registrar of Companies, within 30 days from the date on which the Accounts were laid at the AGM. Where the AGM for any year has not been held, the Accounts shall be filed with the Registrar of Companies within 30 days from the latest date when the AGM ought to have been held in accordance with the provisions of the Act, namely, sections 166 and 210 of the Act. Under section 220(2), it is also provided that if AGM does not adopt the Annual Accounts or if the AGM for any year is not held, a statement of that fact and of the reasons shall be annexed to the accounts filed with the Registrar of Companies. Accordingly,
  - (i) In the present case though AGM was not held, it ought to be held by 29.9.2007 under sections 166/210 of the Act. Thus, the balance sheet and profit and loss account for the year ended 31.3.2007 be filed with the Registrar of Companies by 28.10.2007 along with a statement that AGM was not held by 29.9.2007 as the accounts were not ready.

- (ii) Since the AGM has been held in time on 27.9.2007, the balance sheet and profit and loss account as at 31.3.2004 be filed with the Registrar of Companies by 26.10.2007. A statement be also annexed to the balance sheet that the accounts were not adopted at the AGM held on 27.9.2007 giving reasons therefore.
19. (i) An auditor who is party to such payment of improper dividend is liable to proceeding by action, or, in case of winding up, to misfeasance summons and that the improperly paid dividend may be recovered from him with interest.
- (ii) (a) No. The Auditor cannot be said to be indebted within the meaning of Section 226(3)(d) of Companies Act.
  - (b) In this case the Auditor of the company is said to be indebted if the amount outstanding from him regarding goods and services purchased from the company audited by him exceeds Rs. 1000 irrespective of the nature of purchase or period of credit allowed to other customers, the provisions regarding disqualification of auditor as contained in Section 225 (3)(d) will be attracted (Guidance Note on Independence of Auditors), Also when the firm is indebted to the company, each and every partner of the firm also is deemed to have been indebted.
20. (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. Smith 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. Smith may send the special notice 14 days before the AGM. Otherwise, he may request the company to convent 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. Smith may give special notice of his intention to move the following resolution,

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)
21. (a) "Repatriate to India" means bringing into India the realised foreign exchange and;
- (i) the selling of such foreign exchange to an authorised person in India in exchange for rupees, or
- (ii) the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank, and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall construed accordingly.
- (b) "Authorised person" means an authorised dealer, money changer, authorised under sub-section (1) of Section 10 to deal in foreign exchange or foreign securities;
22. Adjudication and Appeal

#### Time limits

| Section No.   | Obligation                                                         | Time Limit                                                                     |
|---------------|--------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Section 14    | Penalty to be paid                                                 | Within 90 days from the date on which notice for payment of penalty is served. |
| Section 15    | Compounding of Contravention                                       | Within 180 days of receipt of application by Directorate of Enforcement.       |
| Section 16    | Complaint under Section 16(1) to be dealt by Adjudicated Authority | Within 1 year of receipt of complaint.                                         |
| Section 17    | Appeal to Special Director (Appeals)                               | Within 45 days from receipt of order.                                          |
| Section 19    | Appeal to Appellate Tribunal                                       | Within 45 days from receipt of order.                                          |
| Section 19(5) | Appeal to be dealt with by Appellate Tribunal                      | Will try to dispose off the appeal within 180 days from receipt of appeal.     |
| Section 35    | Appeal to High Court                                               | Within 60 days of communication of order or decision.                          |

#### Procedure and powers of Appellate Tribunal and Special Director (Appeals) (Section 28)

The Appellate Tribunal and the Special Director (Appeals) shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court

under the Code of Civil Procedure, 1908 (5 of 1908); while trying a suit, in respect of following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872); requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examinations of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation of default or deciding it expert;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it expert; and
- (i) any other matter which may be prescribed by the Central Government.

An order made by the Appellate Tribunal or the Special Director (Appeals) under this Act shall be executable by the Appellate Tribunal or the Special Director (Appeals) as a decree of civil court and, for this purpose, the Appellate Tribunal and the Special Director (Appeals) shall have all the powers of a civil court.

Notwithstanding anything contained in sub-section (3), the Appellate Tribunal or the Special Director (Appeals) may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

All proceedings before the Appellate Tribunal and the Special Director (Appeals) shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

23. Mr. Krishna is going to USA neither for employment nor for business nor for any purposes which indicate his intention to stay there for an uncertain period. Thus, his physical presence in India during the preceding F.Y., i.e., 2006-2007 shall have to be considered and as he was in India for 365 days during the F.Y. 2006-2007 he would be treated Residential of India for the financial year 2006-2007.

If he continues to stay in USA, say, till 31-3-2008, his stay in India during the preceding financial year; i.e., 2007-2008 shall be less than 183 days and hence he would be treated Non-Residential for the financial year 2008-2009.

24. (a) Differential pricing: Any unlisted company or a listed company making a public issue of equity shares or securities convertible at a later date into equity shares, may issue such securities to applicants in the firm allotment category at a price different from the price at which the net offer to the public is made provided that the price at which the security is being offered to the applicants in firm allotment category is higher than the price at which securities are offered to public.

Explanation- The net offer to the public means the offer made to the Indian public and does not include firm allotments or reservations or promoters' contributions.

A listed company making a composite issue of capital may issue securities at differential prices in its public and rights issue.

In the public issue which is part of a composite issue, differential pricing as per sub-clause 3.4.1 above is also permissible.

Justification for the price difference shall be given in the offer document (or sub-clauses 3.4 and 3.4.2.

- (b) The pre-issue obligations are detailed below:

- (i) The lead merchant banker shall exercise due diligence.
- (ii) Memorandum of Understanding (MOU).
- (iii) Inter-se-allocation of responsibilities.
- (iv) Due Diligence Certificate.
- (v) Certificates signed by the Company Secretary or Chartered Accountant, in case of listed companies making further issue of capital.
- (vi) Undertaking
- (vii) List of promoters' Group.

- (c) Stock Market Data:- Particulars of:

- (a) high low and average market price of the share of the company during the preceding three years;
- (b) monthly high and low prices for the six months preceding the date of filing the draft prospectus with Board which shall be updated till the time of filing the prospectus with the Registrar of Companies/Stock Exchange concerned.
- (c) number of shares traded on the days when the high and low prices were recorded in the relevant stock exchange during said period of (I) and (ii) above;
- (d) the stock market data referred to above shall be shown separately for period-marked by a change in capital structure, with such period commencing from the date the concerned stock exchange recognises the change in the capital structure (e.g. when the shares have become ex-rights or ex-bonus);

- (e) the market price immediately after the date on which the resolution of the Board of directors approving the issue was approved.
  - (f) the volume of securities traded in each month during the six months preceding the date on which the prospectus is filed with ROC; and
  - (g) the volume of business transacted along with high low and average prices of shares of the company shall also be stated for respective periods.
- (d) Promise vis-à-vis performance
- (a) A separate para entitled 'Promise v. Performance - Last three issues' shall be given indicating whether all the objects mentioned in the respective offer documents relating to the earlier issues by the company were met and whether all protections made in the said offer documents were achieved.
  - (b) If not, non-achievement of objects projections shall be brought out distinctly shortfall and delays shall be quantified.

Listed ventures of promoters: A separate para on issues of Group/Associate companies entitled 'Promise vs. Performance - Last one issue of group/associate companies' shall be given indicating whether all the objects mentioned in the respective offer documents relating to group/associates companies were met and whether all projections made in the offer documents were achieved.

- (e) Reservation for small individual applicants: The drawl of lots (where required) to finalise the basis of allotment, shall be done in the presence of a public representative on the Governing Board of the regional stock exchange.

The basis of allotment shall be signed as correct by the executive director/managing director of the stock exchange and the public representative (where applicable) in addition to the lead merchant banker responsible for post issue activities and the Registrar to the issue. The stock exchange shall invite the public representative on a rotation basis from out of the various public representatives on its governing Board.

The above proportionate allotments of securities in an issue that is over subscribed shall be subject to the reservation for small individual applicants as described below:

- (a) A minimum 50% of the net offer of securities to the public shall initially be made available for allotment to individual applicants who have applied for allotment equal to or less than 10 marketable lots of shares or debentures or the securities offered, as the case may be.
- (b) The balance net offer of securities to the public shall be made available for allotment to:

- (i) individual applicants who have applied for allotment of more than 10 marketable lots of shares or debentures or the securities offered and;
  - (ii) other investors including corporate bodies/institutions irrespective of the number of shares, debentures, etc. applied for.
- (c) The unsubscribed portion of the net offer to any one of the categories specified in (a) or (b) shall/may be made available for allotment to applicants in the other category, if so required.
- (f) Guidelines on Advertisement: The lead merchant banker shall ensure compliance with the guidelines on advertisement by the issuer company.
  - (i) An issue advertisement shall be truthful, fair and clear and shall not contain any statement which is untrue or misleading.
  - (ii) Any advertisement reproducing or purporting to reproduce any information contained in an offer document shall reproduce such information in full and disclose all relevant facts and not be restricted to select extracts relating to that item.
  - (iii) An issue advertisement shall not contain statements which promise or guarantee rapid increase in profits.
  - (iv) An issue advertisement shall not contain any information that is not contained in the offer document.
  - (v) No models, celebrities, fictional characters, landmarks or caricatures or the likes shall be displayed on or form part of the offer documents or issue advertisements.
  - (vi) Issue advertisements shall not appear in ore form of crawlers (the advertisements which run simultaneously with the programme in a narrow strip at the bottom of the television screen) on television.
  - (vii) No advertisement shall include any issue slogans or brand names for the issuer except the normal commercial name of the company or commercial brand names of its products already in use.
- (g) Guidelines for 100% book building process.
  - (i) Reservation or firm allotment to the extent of percentage specified in these guidelines shall not be made to categories other than the categories mentioned in sub-clause (iii) below.
  - (ii) Book building shall be for the portion other than the promoters contribution and the allocation made to:
    - (a) 'permanent employees of the issuer company and in the case of a new company the permanent employees of the promoting companies;

- (b) 'shareholders of the promoting companies in the case of a new company and shareholders of group companies in the case of an existing company' either on a 'competitive basis' or on a 'firm allotment basis'.
  - (iii) The issuer company shall appoint an eligible merchant banker(s) as book runner(s) and their name(s) shall be mentioned in the draft prospectus.
  - (iv) The lead merchant banker shall act as the lead book runner and the other eligible merchant banker(s), so appointed by the issuer, shall be termed as co-book runner(s).
  - (v) The primary responsibility of building the book shall be that of the lead book runner.
  - (vi) The book runner(s) may appoint those intermediaries who are registered with the Board and who are permitted to carry on activity as an 'underwriter as syndicate members.
  - (vii) The Board within 21 days of the receipt of the draft prospectus may suggest modifications to it.
25. Guidelines on Initial Public Offers through the Stock Exchange On-Line System (E-IPO)  
A company proposing to issue capital to public through the on-line system of the stock exchange for offer of securities shall comply with the requirements as contained in CHAPTER XIA in addition to other requirements for public issues as given in these Guidelines, wherever applicable.

#### Agreement with the Stock exchange

- 1 The Company shall enter into an agreement with the stock exchange (s), which have the requisite system of on-line offer of securities.
- 2 The agreement should specify inter alia, the rights, duties, responsibilities and obligations of the company and stock exchange(s) inter se. The agreement may also provide for a dispute resolution mechanism between the company and the stock exchange.

#### Appointment of Brokers

- 1 The stock exchange, shall appoint brokers of the exchange, who are registered with SEBI, for the purpose of accepting applications and placing orders with the company.
- 2 The brokers, so appointed accepting applications and application monies, shall be considered as 'collection centers'.
- 3 The broker/s so appointed, shall collect the money from his/their client for every order placed by him/them and in case the client fails to pay for shares allocated as per the Guidelines, the broker shall pay such amount.

- 4 The company/lead manager shall ensure that the brokers having terminals are appointed in compliance with the requirement of mandatory collection centers.
- 5 The company/lead manager shall ensure that the brokers so appointed are financially capable of honouring their commitments arising out of defaults of their clients, if any.
- 6 The company shall pay to the broker/s a commission/fee for the services rendered by him/them. The exchange shall ensure that the broker does not levy a service fee on his client in lieu of his services.

#### Appointment of Registrar to the Issue

The company shall appoint a Registrar to the Issue having electronic connectivity with the Stock Exchange/s through which the securities are offered under the system.

#### Listing

The company may apply for listing of its securities on an exchange other than the exchange through which it offers its securities to public through the on-line system.]

#### Responsibility of the Lead Manager

- 1 The Lead Manager shall be responsible for co-ordination of all the activities amongst various intermediaries connected in the issue/system.
  - 2 The names of brokers appointed for the issue along with the names of the other intermediaries namely Lead Managers to the issue and Registrars to the Issue should be disclosed in the prospectus and application form.
26. (a) Penalty for failure to furnish information, return, etc. (Section 15A) : If any person who, is required under this Act or any rules or regulations made thereunder.
- (i) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
  - (ii) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
  - (iii) to maintain books of accounts or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
- (b) Penalty for failure by any person to enter into agreement with clients (Section 15B): If any person who, is registered as an intermediary and is required under this Act or any rules or regulations made thereunder, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh

rupees for each day during which such failure continues or one crore rupees, whichever is less.

- (c) Penalty for failure to redress investors' grievances (Section 15C): If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

27. 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 of 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 15 T (3) Efforts will be made by SAT to dispose of appeal within 6 months (Section 15 T (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.

28. (a) "option in securities" means a contract for the purchase or sale of a right to buy or sell, or a right to buy and sell, securities in future, and includes a teji, a mandi, a teji mandi, a galli, a put, a call or a put and call securities;

(b) “Spot delivery contract” means a contract which provides for –

- (i) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;\_
- (ii) Transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository ;)

(c) Title to dividend (Section 27)

It shall be lawful for the holder of any security whose name appears on the books of the company issuing the said security to receive and retain any dividend declared by the company in respect thereof for any year, notwithstanding that the said security has already been transferred by him for consideration, unless the transferee who claims the Title to dividends dividend from the transferor has lodged the security and all other documents relating to the transfer which may be required by the company with the company for being registered in his name within fifteen days of the date on which the dividend became due.

29. Refusal of Listing & Appeal (Section 22): When Stock Exchanges refuses listing to a company it has to furnish reasons for refusal to the company. Section 73(1) of Companies Act specifies the time period within which stock exchange has to grant listing permission. If Exchange fails to do so within the time limit or refuses to list, Company may within 15 days make an appeal to the Central Government. The Central Government may after hearing the Stock Exchange vary or set aside the decision of the Stock Exchange or grant permission for listing. No appeal under this section shall be allowed after commencement of Securities Laws (Second Amendment) Act, 1999, since appeal before Securities Appellate Tribunal is permitted under Section 22A.

Powers of Securities Appellate Tribunal (Section 22B)

SAT shall have power to regulate their own procedures and will be vested with power vested in Civil Court under Code of Civil Procedure 1908 in respect of following matters:

- (a) summoning and enforcing attendance of any person and examining him on oath;
- (b) requiring discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;

- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and
- (h) any other matter which may be prescribed.

30. Application for recognition (Section 3)

Any Stock Exchange desirous of being recognised may make an application to SEBI in the prescribed manner.

Application must be accompanied with Bye-Laws, Rules, Regulations which must contain specific details on :

- (1) the governing body of Stock Exchange, its constitution and powers of management and manner in which its business is transacted.
- (2) Powers and duties of office bearers of the Stock Exchange.
- (3) Various classes of members, qualification for membership and the exclusion, suspension, expulsion and re-admission, suspension, expulsion and readmission of members.
- (4) The procedure for registration of Partnerships as members to stock exchange and rules to nomination of authorised representatives.

31. Procedure for investigation of combination (Section 29)

- (1) Notice to parties: Where the Commission is of the opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted. (Sub-section 1).
- (2) Directions to parties to publish details: The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination (Sub-section 2).
- (3) Invitation to affected party: The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published.
- (4) Additional information: The Commission may, within fifteen working days from the expiry of the period specified before, call for such additional or other information

as it may deem fit from the parties to the said combination. The additional or other information called for by the Commission shall be furnished by the parties to the combination within fifteen days from the expiry of the above-specified period. After receipt of all information and within a period of forty-five working days from the expiry of the period for additional information, the Commission shall proceed to deal with the case of accordance within the provisions contained in Section 31.

32. Composition of Commission: (1) The Commission shall consist of a Chairperson and not less than two and not more than ten other Members to be appointed by the Central Government:

Provided that the Central Government shall appoint the Chairperson and a Member during the first year of the establishment of the Commission.

- (2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who, has been, or is qualified to be, a judge of a High Court; or, has special knowledge of, and professional experience of not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, may be useful to the Commission.
- (3) The Chairperson and other Members shall be whole-time Members.