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**PAPER 4: CORPORATE LAWS AND SECRETARIAL PRACTICE  
MAY 2002**

Question Nos. 1, 2 and 3 are compulsory  
Answer any four from the rest

**Question 1**

Answer any **two** of the following:

- (a) PQR Limited is paying remuneration to its non-executive directors in the form of commission at the rate of one percent of the net profits of the company distributed equally among all the non-executive directors. The company is providing depreciation on straight line basis at the rates specified in Schedule XIV to the Companies Act, 1956. The company seeks your advice in respect of the following:
- Whether it is necessary to make adjustment in respect of depreciation for the purpose of arriving at the net profit of the company to determine the quantum of remuneration payable to its non-executive directors.
  - Is it possible to pay minimum remuneration to non-executive directors besides sitting fees in the event of loss in a financial year?
- Advise the company explaining the relevant provisions of the Companies Act, 1956.
- (b) Explain the significance of the definition clause in a statute. The definition of a word may be either restrictive or extensive. Elaborate this with particular reference to the following definition of “Book and Paper” as contained in the Companies Act, 1956;  
“Book and Paper” include accounts, deeds, vouchers, writings and documents.
- (c) M/s. Herbal Pharma Limited, a listed company, decides to make a public issue of equity shares. Explain briefly the eligibility norms prescribed by SEBI guidelines to be complied with by the company.

**(6+6+6= 18Marks)**

**Question 2**

Answer any **two** of the following:

- (a) The financial year of M/s. Uptodate Business Consultants Ltd., ends on 30<sup>th</sup> June every year. For the financial year ended 30.6.2001, the company could not hold its annual general meetings on or before 31.12.2001 and accordingly requested the Registrar of companies, Chennai to grant an extension of time for a period of 3 months so that the general meeting could be held on or before 31.3.2002. The company held its last annual general meeting on 31.12.2000 for adopting its annual accounts for the year ended 30.6.2000. Examine whether the request of the company would be considered by the Registrar in view of the fact that if extension was granted there would be no annual general meeting of the company during the calendar year 2001.
- (b) A group of investors are upset with the functioning of two leading stock brokers of Calcutta Stock Exchange and want to make a complaint to SEBI for intervention and redressal of their grievances. Explain briefly the purpose of establishing SEBI and what type of defaults by the stock brokers come within the purview of SEBI Act, 1992.
- (c) Explain the meaning of the word “Statute” and discuss the need for interpretation of any statute citing an example in the case of holding the annual general meeting of a company where more than one prescribed time is given in the Companies Act, 1956.

**(6+6+6=18 Marks)**

**Question 3**

Answer any **two** of the following:

- (a) According to Foreign Exchange Management Act, 1999, a person resident in India shall take all reasonable steps to repatriate to India any amount of foreign exchange earned and accrued to him. What is meant

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by the expression “Repatriate to India”? State the cases where foreign exchange can be held or need not be repatriated to India by a resident in India.

- (b) Explain the meaning of the term “Adjudicating Authority” under the Foreign Exchange Management Act, 1999, the powers available with the said authority to pass orders imposing penalty and enforce the same in relation to violation of any provisions of FEMA by Mr. Dubious, a resident in India.
- (c)
- How will you determine whether a particular business unit like a factory or office is a “person resident in India” under Foreign Exchange Management Act, 1999?
  - “Printex Computer” is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under FEMA, 1999 of printer units in Pune and that of Dubai Branch? **(8+8+8=24Marks)**

#### Question 4

- (a) Some of the shareholders of M/s. Robid Fighters Limited are dissatisfied with the continuous fighting among the two groups of the Board of Directors. They made a requisition to call an extraordinary general meeting to pass certain resolutions which they feel will improve the working of the company. The management of the company has refused to act on the requisition to given by the shareholders on the ground that reasons for the proposed resolutions have not been disclosed. Examine in this context the rights of the shareholders to requisition the meeting and the powers of the management not to hold the meeting on the aforesaid ground.
- (b) Examine the validity of the following:
- Mr. Q, a Director of PQR Limited proceeding on a long foreign tour, appointed Mr. Y as an alternate director to act for him during his absence. The articles of the company provide for appointment of alternate directors. Mr. Q claims that he has a right to appoint alternate director.
  - The Articles of Association of M/s. ABC Ltd., provide that a meeting of the Board of Directors shall be held at 11:00 A.M on the last day of every quarter ending on 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September and 31<sup>st</sup> December. Relying on the said provision, the company did not send notices to the directors in respect of a board meeting held on 31.3.2002. Some of the directors have questioned the validity of the board meeting on the ground that individual notices have not been sent to director. **(8+7=15Marks)**

#### Question 5

- (a) The Board of Directors of M/s. Greenfield Projects Limited, a company whose shares are listed on the Delhi Stock Exchange propose to give loans to a sister company in excess of the limit prescribed under section 372(1) of the Companies Act, 1956. The next annual general meeting of the company is due only after six months. Since the board is anxious to complete the formalities quickly without waiting for the date of next annual general meeting, advise the Board about the steps to be taken to comply with the legal requirements under the Companies Act, 1956.
- (b) The word “Misfeasance” is used in the Companies Act at several places but the same has not been defined. Explain as to how the meaning of the said word is ascertained in the absence of any definition. Examine whether misfeasance proceedings initiated against a director under the Companies Act can be continued even after his death. **(8+7=15 Marks)**

#### Question 6

- (a) With a view to boost the share values, the Central Government wants to amalgamate two Public Limited Companies into a single company. The Government and Public Financial Institutions have substantial interest in both the companies. The two companies are in the business of tourism and running several hotels which are not making good profits and consequently the share prices are depressed. Examine the powers of the Central Government to amalgamate the two companies in public interest.

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- (b) M/s.Supercelan Industries Private Limited is a company in which there are three shareholders and all of them are directors of the company. Mr.Superman holds 60% of the paid up share capital while the balance 40% of shares is held equally by the remaining directors. Because of some rift among them, the two directors holding 40% share capital have aligned and started preventing the holding of any meetings of the company. The Articles of Association of the company provide for a minimum of two directors / members as quorum for board meetings as well as general meetings. Mr.Superman has become helpless and seeks your advice to tackle the situation. Advise. **(8+7=15 Marks)**

### Question 7

- (a) M/s. Hurybury Builders Limited is contemplating to enter into a joint venture agreement with another construction company for the development of landed properties located at Bangalore. Since it is not possible to convene the Board Meeting immediately, as the directors are at different places in a connection with various works, the Managing Director seeks your advice on the following matters:
- Whether the resolution pertaining to the joint venture agreement is required to be passed at the Board Meeting convened for this purpose or whether it can be passed by means of a circular resolution.
  - What are the resolutions that are required to be passed only at the meetings of the Board of Directors?
  - The steps that are required to be taken to pass the Board resolution by circulation. Advise
- (b) M/s.Kith and Kin Consultants Private Limited seeks your legal advice regarding the following appointments relating to directors and their relatives.
- Mr.Nephew, who is a relative of one of the directors, is to be appointed as the Managing Director on a monthly salary of Rs.30,000 plus other perquisites as applicable to other executives of the company.
  - Miss. Niece, a relative of a director, is to be appointed as Chief Executive Officer on a consolidated salary of Rs.25,000 per month.

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

**(8+7=15 Marks)**

### Question 8

- (a) M/s. Continuous Conflicts Ltd., is a company controlled by two family groups. The first family group has four directors, namely, Mr.A, Mr.B, Mr.C and Mr.D on the board of directors. The second family group has two representatives Mr. X and Mr.Y on the Board. Because of internal family troubles, the first group, by virtue of its majority shareholding removed both Mr.X and Mr. Y as the directors of the company. Aggrieved by this action the second group is planning to move an application before the Company Law Board. You have been approached for advice. Advise as to the eligibility restrictions regarding filing the application and the chances of getting relief from the Company Law Board, assuming that there is no other material on record in support of oppression of the minority group.
- (b) M/s. A to Z Technologies Ltd., has been wound up and the official liquidator has been asked to take charge of the company. Briefly explain the relevant provisions regarding filing of statement of affairs in relation to the company in liquidation. **(8+7=15 Marks)**

### Question 9

- (a) Mr.A is a director of ABC Limited failed to repay matured deposits from 1<sup>st</sup> April, 2001 onwards and the default continues. But ABC Limited is regular in filing annual accounts and annual returns. Mr. A is also a director of PQR Limited and XYZ Limited.

Answer the following questions with reference to the relevant provisions of the Companies Act, 1956 .

- Whether Mr.A is disqualified U/s.274(1)(g) of the Companies Act, 1956 and if so, whether he is required to vacate his office o director in PQR Limited and XYZ Limited.
- Is it possible for Board of Directors of DEF Limited to appoint Mr.A as an Additional Director at the board meeting to be held on 15<sup>th</sup> May, 2002. Would your answer be different if Mr.A ceased to be a Director of ABC Limited by resignation on 1<sup>st</sup> March, 2002?

State also the auditor's responsibility with regard to reporting of disqualification U/s. 274(1)(g).

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- (b) The paid up capital of XYZ Limited has been increased from Rs.4 crores to Rs.6 crores. The Board of Directors of XYZ Limited purpose to constitute on “Audit Committee”. At present the board consist of 10 directors including a Managing Director. Draft a Board resolution taking into account the requirements under the Companies Act, relating to the constitution of the Audit Committee and the chairman of the audit Committee. XYZ Limited is not a listed public company. **(10+5=15Marks)**