
PAPER 4 : CORPORATE LAWS AND SECRETARIAL PRACTICE
MAY 2001

Questions 1, 2 and 3 are compulsory

Answer any four from the rest

Question 1

Answer any **three** of the following:

- a) Due to internal problems in the working of M/s Infighting Detergents Ltd., Mr. Satyam, the Executive Director, and Mr. Shivam, a Director, have submitted their resignations and decided to dissociate themselves from the working of the company. Mr. Sundaram, the Managing Director, decides to refuse their resignations. Examine whether the Managing Director can compel Mr. Satyam and Mr. Shivam to continue as per the provisions of the Companies Act. **(6 marks)**
- b) X Ltd. is being managed by Mr. Clever as the Managing Director. Serious allegations have been made by some shareholders and creditors of the company that the Managing Director has misused his position and caused enormous loss to the company. The said shareholders and creditors of the company make a complaint to the Central Government to intervene and provide relief to them. Their main prayer is that the Managing Director should be removed from the post. Explain the powers of the Central Government in this regard. **(6 marks)**
- c) M/s Ambitious Financiers Ltd., an existing unlisted public company, is planning to issue to the public five lakhs fully convertible debentures of Rs. 100 each. Explain the eligibility norms to be fulfilled by the company as per SEBI guidelines before making the issue. **(6 marks)**
- d) How far are (i) title, (ii) preamble and (iii) marginal notes in an enactment helpful in interpreting any of the parts of an enactment? **(6 marks)**

Question 2

Answer any two of the following:

- a) M/s Universal Machines Ltd. has secured patent rights in respect of its invention of a packaging Machine. The company entered into a contract with M/s Yes Sir Distributors Ltd. for grant of exclusive license to the distributor to make and sell the machines all over the country. A complaint was lodged with the MRTP Commission that the exclusive license agreement promotes monopolistic and restrictive trade practice in the country. Examine the powers available to the MRTP Commission in this regard and the right of Universal Machines in respect of the patented product. **(5 marks)**
- b) M/s Large and Timely Ltd., a cement manufacturing company, has appointed various stockists. The agreement appointing the stockists contained a clause that the stockist should not deal in the cement produced by any other manufacturer. An inquiry was instituted on the ground that the said clause is restrictive and is prejudicial to public interest. The company feels that such a restriction is reasonable having regard to the nature of the commodity, which can easily be mixed up. Advise the company. **(5 marks)**
- c) Explain the meaning of the term “Current Account Transaction” and the right of citizen to obtain Foreign Exchange under the Foreign Exchange Management Act, 1999. **(5 marks)**

Question 3

Answer any two of the following:

- a) M/s High Flying Industries Ltd. has become a sick Industrial Company and a reference was made to the Board for Industrial and Financial Reconstruction. During the course of the proceedings before BIFR, a scheme was put forward by the Operating Agency and sanctioned by the Board, which provided for exclusion of certain provisions contained in section 41 and 79 of the Income Tax Act. Examine briefly the powers of the BIFR to revive a sick Industrial Company and the overriding effect of the orders passed by it over the provisions of the Income Tax Act. **(6 Marks)**
- b) When does a company be treated as a potentially sick Industrial Company? Examine whether BIFR has any authority to wind up such potentially sick Industrial Company. **(6 marks)**
- c) The Balance Sheet of M/s Get Rich Quick Ltd. as at 31.3.2001 disclosed the following details:

(i)	Share Capital	Rs. 150 crores
(ii)	Reserves and Surplus	Rs. 750 crores

The company has issued in the year 1996, fully convertible debentures of Rs. 100 crores, which are due for conversion in the year 2001. The company proposes to issue bonus shares in the ratio of 1:1. Explain briefly the SEBI guidelines to be followed by the company. **(6 marks)**

Question 4

- a) The agenda of meeting of the Board of Directors of M/s Successful Enterprises Ltd. held on 20.3.2001 for adopting the annual accounts for the year ended 31.12.2000 included an item relating to payment of dividend. At the meeting it became apparent that the profits made during the year ended 31.12.2000 were inadequate to declare dividend. The Board was keen to maintain the rate of 20% dividend on the equity shares as declared in the previous years so as to maintain the image of the company. The company has accumulated profits earned in the previous years, which were transferred to reserves. Advise the company as to how it should go about to achieve the objective to pay dividend at the rate of 20% on the equity shares. **(8 marks)**
- b) Immediately upon conducting the last general meeting held in July, the chairman went overseas for medical treatment. Accordingly the minutes of the said meeting could not be signed by him. To meet the requirements of the law, he sent a letter of authority to the Secretary authorizing the latter to sign the minutes on the former's behalf. Can the Secretary act on the letter of authority? If not, what procedure should be followed? **(7 marks)**

Question 5

- a) M/s Easy Escape Consultants Ltd. was incorporated in the year 1997 as a Public Limited Company. It made a public issue in the year 1998 and collected substantial funds from the public. However, the company, till date, has not filed any Annual Returns or Balance Sheets with the Registrar of Companies, New Delhi. Efforts to locate the directors at their given addresses have not yielded any results. A group of shareholders, who wish to take initiative in this regard seek your advice in respect of the following matters:
- The nature of defaults committed and the penal action that can be taken against the company and its Directors;
 - Whether any steps can now be taken to hold a General Meeting of the company to elect a new set of Directors in place of the existing Directors. **(8 marks)**
- b) The Board of Directors of Stepping Stones Publications Ltd. at a meeting held on 15.1.2001 resolved to borrow a sum of Rs. 15 crores from a nationalized bank. Subsequently the said amount was received by the company. One of the Directors, who opposed the said borrowing as not in the interest of the company has raised an issue that the said borrowing is outside the powers of the Board of Directors. The company seeks your advice and the following data is given for your information: **(7 Marks)**
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|-------|----------------------|---------------|
| (i) | Share Capital | Rs. 5 crores |
| (ii) | Reserves and Surplus | Rs. 5 crores |
| (iii) | Secured Loans | Rs. 15 crores |
| (iv) | Unsecured Loans | Rs. 5 crores |
- Advise the management of the company.

Question 6

- a) Mr. Doubtful was appointed as the Managing Director of Carefree Industries Ltd. for a period of five years with effect from 1.4.1998 on a salary of Rs. 12 lakhs per annum with other perquisites. The Board of Directors of the company, on coming to know of certain questionable transactions, terminated the services of the Managing Director from 1.3.2001. Mr. Doubtful termed his removal as illegal and claimed compensation from the company. Meanwhile the company paid sum of Rs. 5 lakhs on an ad hoc basis to Mr. Doubtful pending settlement of his dues. Discuss whether: **(8 Marks)**

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- (i) The company is bound to pay compensation to Mr. Doubtful, and , if so, how much;
 - (ii) The company can recover the amount of Rs. 5 lakhs paid on the ground that Mr. Doubtful is not entitled to any compensation, because he is guilty of corrupt practices.
- b) A group of promoters propose to establish a company for charitable purposes without the addition of the word 'Limited' as part of its name. Discuss briefly the procedure to be followed in addition to the normal procedure for incorporation of a company. **(7 marks)**

Question 7

- a) A group of shareholders of Deceptive Duplicating Machines Ltd. filed an application before the Company Law Board alleging various acts of fraud and mismanagement by Mr. Unscrupulous, the Managing Director, and his associates. During the course of hearings before CLB, it was contended on behalf of the company that the alleged transactions had taken place long ago and that the Managing Director, who was responsible for such actions had already been removed and that there is no case before the CLB to interfere in the working of the company. The contention of the applicants on the other hand is that though the fraudulent nature of transactions is a thing of the past and though the Managing Director had been removed, yet the management of the company is controlled by the henchmen of Mr. Unscrupulous. Discuss the powers of the Company Law Board in support of your answer. **(8 Marks)**
- b) The High Court at Mumbai appointed the Official Liquidator as the Liquidator of Imprudent Engineering Co. Ltd. Some of the creditors have brought to the notice of the Liquidator that though the company is in liquidation for the past several years, nothing worthwhile was done to speed up the winding and no documents have been filed to indicate the progress of Liquidation. Examine in this connection the nature and periodicity of returns required to be filed by the Liquidator in terms of the provisions contained in the Companies Act. **(7 marks)**

Question 8

- a) Reckless Constructions Ltd. has gone into liquidation, because of the inability of the company to pay its debts. During the course of winding up a proposal was put forward by the previous management to revive the working of the company through a scheme of arrangement between the company and its creditors. As per the scheme, all the creditors of the company have to forego fifty per cent of their dues. Some of the creditors and shareholders have voiced their opposition to the said scheme. The company approaches you for advice. Discuss the steps that have to be taken by the company in this regard. **(8 marks)**
- b) X Ltd. has a subsidiary company called Y Ltd. The financial year of the holding company is 31st March, whereas that of the subsidiary company ends on 30th June every year. The management of the holding company decides that the financial year of the subsidiary company for the year 1.7.2000 to 30.6.2001 should be extended upto 31.3.2002, so that the financial years of the holding and subsidiary companies end on 31st March every year. Advise the management about the steps to be taken under the Companies Act to achieve the purpose. **(7 marks)**

Question 9

- a) Explain briefly the salient points to be taken into account while drafting the minutes of the Board of Director. Draft a specimen Board resolution regarding the appointment of Mr. Sincere as the Managing Director of Full Cure Pharma Ltd. **(8 marks)**
- b) A group of shareholders approaches you for advice regarding the affairs of Aggressive Textiles Ltd. According to the shareholders, the management of the company is not exercising its powers properly and that the statutory audit is being carried out in a routine manner. They want that a special audit should be conducted so that the real nature of transactions carried out by the management will come to light. Advise, with reference to the provisions of the Companies Act, as to when a special audit can be directed and by whom. **(7 marks)**