
PAPER 4 : Corporate Law and Secretarial Practice
November 1999

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

Question 1

Answer any **three** of the following:

- (a) M/s Happy Homes Limited had sent notices to all its members about the holding of the 5th Annual General Meeting to be held on 15th October, 1999 at 4.00 P.M. As per the notice to the members who are unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent so as to reach at least 48 hours before the meeting. Mr. A, a member of the Company appoints Mr. P as his proxy and the proxy form dated 10-10-99 was deposited by Mr. P with the Company at its Registered Office on 11-10-99. However Mr. A changes his mind on 12-10-99 gives another proxy to Mr. Q and it was deposited on the same day with the Company. Similarly another member Mr. B also gave two separate proxies to two individuals named Mr. R and Mr. S. In the case of Mr. R, the proxy dated 12-10-99 was deposited with the Company on the same day and the proxy form in favour of Mr. S was deposited on 14-10-99. All the proxies viz., P, Q, R and S were present before the meeting. State with reasons in the light of the relevant provisions of the Companies Act, the persons who would be allowed to represent as proxies for members A and B respectively. **(6 Marks)**
- (b) Examine whether the following transactions can be considered as a loan to a Director requiring approval of the Central Government under Section 295 of the Companies Act.: **(6 Marks)**
- (i) An advance payment of salary of Rs. 10,000 to an employee who is the wife of the Managing Director.
 - (ii) A Public Company secures residential accommodation for the use of its Managing director by entering into a license arrangement under which the Company has to deposit a certain amount with the landlord to secure compliance with the terms of the License Agreement.
 - (iii) A Public Company purchases a flat which is subsequently sold to a Director at the prevailing market price, out of which the Director pays 50% immediately and contracts to pay the balance in 10 equal annual instalments.
- (c) Explain briefly the guidelines issued by SEBI to prevent the unscrupulous promoters from making preferential allotment of shares at prices favourable to themselves and against the interest of other shareholders. **(6 Marks)**
- (d) Explain the rule of 'Ejusdem Generis' while interpreting a statute. **(6 Marks)**

Question 2

Answer any **two** of the following

- (a) Under what circumstances can a trader be considered as 'Loss leaders' under the MRTP Act? Barin Goel & Company refuses to supply goods to Naren Sett & Company who is his Whole sale Distributor, because Naren Sett & Company is selling his goods at a low price for the purpose of attracting customers for other goods in which he is dealing. Can Naren Sett & Company make a complaint to any authority under the MRTP Act for remedy? **(8 Marks)**
- (b)
- i. During the course of an enquiry into the alleged restrictive practice of tie-up sales, the respondent has submitted that the said trade practice has been discontinued and the enquiry has now no relevance and hence it should be closed. Examine the merits of the argument of the respondent and the powers of MRTP Commission in such a situation. **(4 Marks)**

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- ii. Mr. X, an Indian resident, receives information that his friend Mr. Y, a non- resident Indian is visiting India for a period of one month on a business trip. Examine whether Mr. X can invite Mr. Y as his guest without violating the provisions of Foreign Exchange Regulation Act. **(4 Marks)**
- (c) State the procedure to be followed under the Foreign Exchange Regulation Act for making remittance of dividends abroad. **(8 Marks)**

Question 3

Answer any **two** of the following:

- (a) M/s Shaky Engineering Company Ltd. Has been facing several litigations regarding its failure to repay the dues to various creditors. The Company has entered into various agreements with creditors rescheduling the payment of debt. Meanwhile the Company has become sick under Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). Dissatisfied with the functioning of the Company, the creditors decide to initiate legal steps against the Company for its failure to honour its Financial Commitments. Advise the creditors keeping in mind the Provisions of SICA. **(7 Marks)**
- (b) Explain the limitations, if any, in a scheme for rehabilitation of Sick Industrial Company providing for the following measures: **(7 Marks)**
- Rationalization of workmen
 - Financial Assistance and sacrifice by Government, Banks and Financial Institutions.
- (c) Critically examine the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 empowering the members of a potentially Sick Industrial Company to remove a director and fill the vacancy created by such removal. **(7 Marks)**

Question 4

- (a) The Board of Directors of M/s PQ Pharma Lt. have met on 10-10-1999 to consider the half-yearly Accounts of the Company for the period ending 30-09-1999. Though the accounts have shown that the Company has made profits, the overall results are not very encouraging as compared to the previous years. The Board in the past has always recommended payment of interim dividend to its shareholders and they would like to continue the same this year also. The Board is confident that the overall performance for the full year will be good. The following questions have been raised: **(7 Marks)**
- Can the Board declare interim dividend in such circumstances?
 - Is it necessary for the purpose of payment of interim dividend that the provisions relating to depreciation and transfer of profits to reserves rules should be complied with?
- Advise the Board of Directors, keeping in view the relevant provisions of the Companies Act, 1956.
- (b) A group of promoters approach you for advice regarding the formation of a Guarantee Company. Advise them briefly about the types of Organisations for which it is suitable to form a Guarantee Company and the advantages that can be derived by registering a Guarantee Company. **(6 Marks)**

Question 5

- (a) A group of shareholders of M/s High Profile Engineering Company Ltd. has filed a petition before the Company Law Board alleging various Acts of Oppression and Mismanagement by the majority shareholders. The petitioner group holds 15% of the issued Share Capital of the Company. During the course of hearing before the CLB, some of the petitioner group of shareholders holding about 6% of the issued Share Capital of the Company has withdrawn their consent by stating that they were misled by the group to sign the petition and after coming to know of the true facts they have disassociated themselves with the petition and they along with the other majority shareholders have submitted that the petition should be dismissed on the ground of non-maintainability. Examine their contention having regard to the provisions of the Company Act. **(7 Marks)**

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- (b) Papa Group of Companies known their business repute have been advocating for payment of donations to political parties as one of the methods of funding elections. The group has recently floated a Company by name M/s. Papa Computers Ltd. and in the very first year of its working made a net profit of Rs. 6 Crores. Examine with reference to the provisions of the Companies Act, whether the said Company can make political donations and what is the maximum limit up to which a Company can political donations.

(6 Marks)

Question 6

- (a) How far is Balance Sheet an acknowledgement of debt of a Company? Board of Directors of Halim Abdul & Sultan Company Limited passed a resolution for payment of sitting fees to directors and the same was shown as fees due to Directors in the Balance Sheet of the Company. Examine whether this provision of fees due to Directors in the Balance Sheet can be considered as an effective enforceable acknowledgement of debt of the company.
- (b) A Public Company proposes to appoint Shri Ram as additional Director and Shri Gopal as a Director in the casual vacancy caused by resignation of the office of Director by Shri Mohan. Draft suitable resolutions for the appointment of Shri Ram and Shri Gopal as directors.

(7 Marks)

(6 Marks)

Question 7

- (a) M/s Excellent Industries Limited is a Multi product Company with a paid up capital of Rs. 4 Crores. A contract for the purchase of Textile Machineries and Balancing Equipments valued at Rs. One Crore was placed before the Board for approval. The Managing Director of the Company is interested in this contract because his son-in-law is a partner of the firm selling the machineries and the equipment to the Company. Explain briefly the procedure to be followed by the company to enter into the said contract.
- (b) The Balance Sheet of M/s Hush Hush Ltd. As at 31-03-1999 filed with the registrar of Companies, Mumbai disclosed that the liabilities amounted to Rs. 2.75 crores as against the Assets of Rs. 1.25 Crores. On the basis of the scrutiny of the Balance Sheet, the registrar filed a winding up petition against the Company stating that it is commercially insolvent and that the Company is unable to pay its debts on the ground that the value of liabilities far exceeded the value of assets. Examine whether the Company has any case to defend against the winding up petition filed by the registrar.

(7 Marks)

(6 Marks)

Question 8

- (a) ACE Automobiles Limited is a Company engaged in the manufacture of Cars. The Company's investment in the shares of other bodies corporate and the loans made to other bodies corporate exceed 60 per cent of its paid-up share capital and free reserves and also 100 per cent of its free reserves. The Company has obtained a term loan from the Industrial Credit and Investment Corporation of India Limited. The Company proposes to increase its investment in the equity shares of ACE Forgings Limited from 60 per cent to 70 per cent of the equity share capital of Ace Forgings Limited by purchase of shares from the Forging Collaborator.
- State the legal requirements to be complied with by ACE Automobiles Limited under the Companies Act to give effect to the above proposal. Will your answer be different if the company has defaulted in repayment of matured deposits accepted from the public?
- (b)
- A non- member from whom the Company has accepted deposits asks fro a copy of the latest Balance Sheet of the Company.
 - A member wants to inspect the register of Directors' shareholdings on a day other than the date on which the Annual General Meeting of the Company is held.
 - Notice has been received from a member proposing himself for appointment as a director after the issue of notice convening the Annual General Meeting.
- As a Secretary of a Public Company how will you deal with the above situations?

(6 Marks)

Question 9

- (a) What is meant by Misfeasance? Under what circumstances can the official liquidator intimate misfeasance proceedings against the Auditor of the Company? Is there any time limit for initiating such proceedings? **(7 Marks)**
- (b) M/s Welcome Computers Ltd. Propose to recruit a large number of engineers for its Y2K operations. To prevent the early migration of employees, the Company has entered into an agreement with the employees containing a stipulation that each employee should deposit a sum of Rs. 25,000/- as security and which sum will be paid back to the employee on completion of 3 years of contract of service. Elucidate the provisions of the Companies Act in the matter of collection and deployment of monies received by way of security deposits from the employees. **(6 Marks)**