
PAPER 4: COMPANY LAW AND SECRETARIAL PRACTICE
MAY 1997

Questions 1, 2 and 3 are compulsory.

Answer any four of the rest.

Question 1

Answer any **three** of the following:

- (a) Shri Prakash Chand was appointed as the Managing Director of M/s Sun Fabrics Limited for a period of 5 years with effect from 1.4.1996 on a remuneration of Rs. 50,000 per month with other perquisites which are in excess of the limits laid down in Schedule XIII to the Companies Act. The Central Government has received a complaint in his regard, as the company has not sought the approval of the Central Government for the said appointment. Examine the powers of the Central Government on such a situation. Also examine the validity of acts of Shri. Prakash Chand as Managing Director. **(6 marks)**
- (b) A Public Limited Company going for a public issue of shares desires to make preferential allotment of shares to certain Foreign Institutional Investors. Explain the conditions such a company will have to comply with as per the guidelines framed by the Securities and Exchange Board of India in this regard. **(6 marks)**
- (c) Describe briefly the guidelines issued by the Securities and Exchange Board of India relating to book-building process. **(6 marks)**
- (d) While drafting the text of different sections in an Act, it is normally noticed that the section is supported by certain illustrations, provisos, explanations and schedules. Explain the relevance of supporting the text of the section by the above. **(6 marks)**

Question 2

Answer any **two** of the following:

- (a) M approaches a dealer for the purchase of a fridge at the listed price. The dealer arbitrarily without any specific reasons refuses to sell the fridge to M. M complains to the MRTP Commission against the trade practice adopted by him. Decide with reference to the provisions of the MRTP Act, 1969 whether the Commission can take any action against the dealer. **(8 marks)**
- (b)
 - i. Whether a party accused of committing an unfair trade practice can plead gateways under MRTP Act. **(2 marks)**
 - ii. Whether an arrangement or understanding between the parties not reduced in writing can be considered as an agreement for the purpose of registration under MRTP Act. **(2 marks)**
 - iii. A Company proposes to pay sitting fees to its non-resident directors for attending board meetings in India. State the provisions of Foreign Exchange Regulation Act which are attracted in this case and the conditions subject to which such payment can be made. **(4 marks)**
- (c) M/s Inter-Continental Foods Inc., a company registered in U.S.A. decides to purchase one immovable property in India for the purposes of its business and another immovable property in India as an investment. Advise the company about the provisions of F.E.R.A. to which it will be subject to and the procedure it will have to follow in this regard. **(8 marks)**

Question 3

Answer any **two** of the following:

- (a) Explain the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 with regard to filing of an appeal against the order of the BIFR. What procedure shall a company follow in this regard? **(7 marks)**
- (b) Explain the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 which cast a responsibility on the Board of Directors of a company for reporting sickness in the company. State the procedure to be followed for a reference to be made to BIFR. **(7 marks)**
- (c) With reference to the provisions of Sick Industrial Companies (Special Provisions) Act, 1985, when can a company for which reference has been made to BIFR, be wound up? **(7 marks)**

Question 4

- (a) In what way does the Companies Act, 1956 regulate the closure of register of members, by a company? Explain the secretarial procedure a company is required to follow in this regard. **(7 marks)**
- (b) M/s. International Carrier Limited purchased a flat in Mumbai to give residential accommodation to Shri.Ravi Mehta, the purchase price and requested for time to pay the balance amount in three equal half-yearly installments at 10% interest per annum. Examine whether the arrangement would amount to a loan to the Managing Director and if so, whether the loan was in order. **(6 Marks)**

Question 5

- (a) Reliable Castings Limited is a subsidiary of Unique Machineries Limited. The Board of Directors of the respective companies have made the following appointments on a consolidated monthly salary of Rs. 12,000 in the scale of Rs.12,000 – 500 – 15,000 with effect from 1.1.1997:
 - i. Shri Ram Singh, a Director of Unique Machineries Limited, s Factory Manager of Reliable Castings Limited.
 - ii. Shri Rajesh Patel, a Director of Reliable Castings Limited, as Purchase Manager of Unique Machineries Limited.
 - iii. Shri Sundar, a relative of a Director of Unique Machineries Limited, as Sales Manager of Unique Machineries Limited.
 - iv. Shri Rakesh not related to any Director of both the companies as Chief Accountant of Unique Machineries Limited. But his relative has been appointed as Additional Director of Unique Machineries Limited with effect from 1.5.1997.

Explain the legal requirements to be complied with the Companies Act to give effect to or continuation of the above appointments of employees. **(7 marks)**

- (b) M/s JD Company Limited made a profit of only Rs. 20 lakhs after providing for depreciation for the year ended 31st March, 1997 and as a result the company is not in a position to declare any dividend for the year. But, the company declares a dividend of 15% on its paid-up share capital out of reserves. The paid-up share capital of the company and its reserves as on 31st March, 1997 are Rs. 10 crores and Rs. 2 crores respectively. The average dividend declared by the company in the last 5 years is 25%.
With reference to the provisions of the Companies Act, 1956, examine the validity of the declaration of dividend by the company. **(6 marks)**

Question 6

- (a) Examine with reference to the provisions of the Companies Act, 1956 whether the following act of the company is valid:

The Board of Directors of a company bona fide decides not to declare any dividend for the year ended 31st March, 1997. A group of shareholders complain to the Company Law Board against the above decision of the Board of Directors on the ground of mismanagement and wants the company to declare dividend. **(7 marks)**

- (b) What are the powers of the Central Government under the Companies Act to remove managerial personnel of a company? Under what circumstances and how such powers can be exercised? **(6 marks)**

Question 7

- (a) Examine with reference to the relevant provisions of the Companies Act, the possibilities of the following:
- Signing of minutes of general meeting of a company by a person other than the Chairman of the said meeting.
 - Holding of Annual General Meeting of a Private Company in New Delhi when its registered office is situated in Lucknow.
 - Validity of a company's claim that the Balance Sheet and Profit and Loss Account for a financial year have not been filed with the Registrar of Companies because the same have not been laid at the relevant annual general meeting though held in time but adjourned due to non-availability of audited accounts. **(7 marks)**
- (b) The Board of Directors of M/s Sunshine Laboratories Limited at a meeting held on 15.4.1997 authorised Shri Pawan Shukla, the Managing Director, to invest the surplus funds upto a maximum of Rs. 50 lakhs, pursuant to the said resolution of the board. The Managing Director decides to invest a sum of Rs. 30 lakhs in M/s Friendly Investments Limited. The proposed investment exceeds 30% of the paid up equity share capital of M/s Friendly Investments Limited. Examine with reference to the provisions of the Companies Act, whether the decision of the Managing Director is in order. **(6 Marks)**

Question 8

- (a) The name of Shri A. K. Modi appears in the register of members of M/s XYZ Ltd. as holding 5,000 equity shares of Rs. 10 each. However according to the information given to you, Shri. R. S. Damania is the beneficial owner of the said shares. Advise XYZ Ltd. about the procedure to be followed under the provisions of the Companies Act. **(7 Marks)**
- (b) M/s Greenfields Industries Ltd. Has completed its public issue in the year 1996. One Shri Pratap Singh, who is not a shareholder and who is in no way connected with the business of the company demanded the production of the register of members for getting some information for his use. The company's officials have refused the request/demand of Shri Pratap Singh. The company has since received a legal notice from Shri Pratap Singh. Advise the company. **(6 marks)**

Question 9

- (a)
- Explain the cases in which a company may be wound up by the court.
 - Examine with reference to the provisions of the Companies Act, 1956 whether winding up can be ordered by the Court in case the Board of Directors of the company decide to discontinue one of its business. Would your answer differ in case the company suspends the entire business? Explain. **(7 Marks)**
- (b) State briefly the requirements under the Companies Act relating to filing of accounts with the registrar by a foreign company having a place of Business in India in respect of its global business and Indian Business. **(6 Marks)**