CORPARATE AND ALLIED LAWS

MAY 2013

Marks

4

1 (a) Mr. Ramanujam, one of the Directors in Debari Food Processing Limited was not satisfied with the performance of the company in financial matters. He requested Mr. Anandaraja, a Chartered Account, to inspect the books of accounts of the company on his behalf. Decide, under the provision of the Companies Act, 1956 whether the said company can refuse to allow Mr.Anandraja to inspect the books of accounts?

5

(b) The issued, subscribed and paid-up capital of Supreme Chemicals Limited is ` 2 crore consisting kof 20,00,000 equity of ` 10 each. The said company has 800 members. For the purpose of relief against oppression and mismanagement, a petition was submitted before the appropriate authority duly signed by 90 members holding 1,00,000 equity shares of the said company. Subsequently, 30 members, who signed the petition, withdrew their consent. Decide, under the provision of the Companies Act, 1956 whether the said petition is maintainable?

5

(c) Mr. Gopalasunderam, a Director in Fatehnager Textiles Limited, took a loan from the company without obtaining the approval of the Central Government. Examine, under the provisions of the Companies Act, 1956 whether it is possible for him to avoid prosecution by applying to the Central Government for approval or by refunding the loan taken by him from the company.

6

(d) The Securities and Exchange Board of India received serious complains against Mr. Satyanarayan, a member of Mavli Stock Exchange. State as to what powers can be exercised by the Securities and Exchange Board or India to make enquiries and to take action in this matter, under the provisions of the Securities Contracts (Regulation) Act, 1956?

Solution:

1.(a)

- Section 209A deals with the inspection of the books of account etc., of companies.
- Section 209A clearly states that any director can inspect the books of accounts during business hours.
- In sugrabai Alibhain v. Amtee Properties (P) Ltd. [1984] 55 Comp Cas. 734 (Bom.), the Bombay High Court observed that a director is entitled to ask for inspection of books either personally or through an agent subject to the condition that the agent must give an undertaking to the company that he shall not pass on any information to any person other than the director who had appointed him to carry out the inspection.

- Applying the provisions of Section 209A and the related case laws Debari Food processing Limited cannot refuse to allow Mr. Anandaraja, to inspect the books of accounts as he is acting in the capacity of an agent of Mr. Ramanujam, Director in Debari Food Processing Limited. But Mr. Anandaraja, give an undertaking to the company that he shall not pass on any information to any person other than the director, Mr. Ramanujam, who had appointed him to carry out the inspection.

1.(b)

- As per section 399 of the Companies Act, 1956, in the case of a Company having a share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:

    1. 100 members; or
    2. 1/10th of the total number of members; or
    3. Members (including equity shareholder as well as preference shareholder) holding not less than 1/10th of the issued share capital of the company.

- The consent to be given by shareholders is reckoned at the beginning of the proceedings.
- The withdrawal of consent by shareholder during the course of proceedings does not affect the maintainability of the application.

Analysis:

- In this question, th shareholding pattern of the company is as follows: -
    - ➢ 20,00,000 ESC of Rs. 10 each amounting to Rs. 2 crore
- The application alleging oppression and mismanagement has been made by the members as follows: -

    a. Number of members making the application: -

    Equity Share Holders 90

    b. Amount of share capital held by members making the application

    Equity Share Capital Rs. 10,00,000

- The application shall be valid if it has been made by the lowest of the following:
    - 100 members
    - 80 members (being 1/10th of total number of members)
    - Members holding Rs. 2,00, 000 share capital (being 1/10th of Rs. 2 crore)

Conclusion: -

- As it is evident, the application made by 90 members meets the eligibility criteria specified u/s 399; therefore, the application is maintainable.
- Such application shall remain valid despite the fact that some of the applicants have withdrawn their consent.

1. (c)

Section 295 of the Companies Act, 1956 deals with loans to directors.

It states as follows:

No company (without obtaining the previous approval of the Central Government in that behalf shall directly or indirectly,] make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by any director of the lending company

Every person who is knowingly a party to such contravention under Section 295 shall be punishable either with fine which may extend to five thousand rupees or with simple imprisonment for a term which may extend to six months.

Where any such loan, or any loan in connection with which any such guarantee or security has been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub- section; and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub- section by way of imprisonment shall be proportionately reduced.

Thus Mr. Gopalasunderam, cannot avoid prosecution by applying to the Central Government for approval or by refunding the loan taken by him from the company as Section 295 expressly states that no company without obtaining the previous approval of the Central Government in that behalf shall directly or indirectly give any loan or gurantee or security to any director.

Mr. Goplasunderam will be punishable either with fine which may extend to five thousand rupees or with simple imprisonment for a term which may extend to six months.

1. (**d**)

   Power of SEBI to call for information and explanations (S.6)

   SEBI may by order in writing –

   (a) call upon a recognized stock exchange or any member thereof to furnish such information and explanations relating to

   (i) the affairs of the stock exchange, or

   (ii) such member in relation to the stock exchange

   (b) appoint one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the governing body of a stock exchange or the affairs of any of its members in relation to the stock exchange and submit a report thereon to it within such time as may be prescribed.

   SEBI shall be satisfied that it is in the interest of the trade or in public interest to exercise the above powers.

   In the case of inquiry into the affairs of any of the members of a stock exchange the governing body of the stock exchange may be directed to make the inquiry and submit its report to it.

Where any inquiry mentioned above is pending the following persons shall be bound to produce before the inquiring authority all books of account and other documents in his custody or power that relate to or have a bearing on the subject matter of such inquiry.

The following persons shall also be bound to furnish any statement or information relating thereto as may be required of him.

(a) Every Director manager, secretary or other officer of such stock exchange;

(b) Every member of such stock exchange;

(c) If the member is a firm every partner, member or secretary or other officer of the firm;

(d) Every other person or body of persons who has had dealing in the course of business with any of the above persons, whether directly or indirectly.

8

2 (a) Hi-tech Engineering Limited engaged in the business of engineering construction and cement manufacturing, decided to concentrate on its core business of engineering construction and hive off (demerge) its cement business in favour of Premier Cement Limited. State the steps to be taken by Hi-tech Engineering Limited to give effect to the proposed demerger under the provisions of the Companies Act, 1956.

8

(b) State the legal requirements to be complied with by a public company in respect of a Board Meeting.

Examine with reference to the provisions of the Companies Act, 1956 whether notice of a Board Meeting is required to be sent to the following persons:

(i) Alternative Director ;

(ii) An interested Director ;

(ii) A Director who has expressed his inability to attend a particular Board Meeting;

(iv) A Director who has gone abroad.

8

Solution:

2. (a).

Demerger comes under the purview of Section 391-394 of the Companies Act, 1956. Thus for the purpose of hive off (demerger) of cement business in favour of Premier Cement Limited Hi.- Tech Engineering Limited must follow the procedure for reconstruction and amalgamation of companies as given in Section 394 of the Companies Act, 1956.

Provisions for facilitating reconstruction and amalgamation of companies (Sec 394)

Application to be made

An application **should be made to the Tribunal** under section 391 for the sanctioning of a compromise between a company and any other person.

Evidence to be shown

It shall be shown to the Tribunal that

1. the compromise or arrangement has been proposed for the purposes of reconstruction of any company or companies, or amalgamation of any two or more companies; and

2. under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a “transferor or company”) is to be transferred to another company (in this section referred to as “the transferee company”);

Procedural Aspects

1. The Tribunal may accord a sanction of the scheme after it has satisfied itself fully that

   a. All meetings have been convened and held properly.

   b. The scheme has been approved by the requisite majority of the different classes of creditors and members

   c. In case of amalgamation, the circular and notice has been sent to the members of both companies.

   d. All other statutory provisions have been complied with.

   e. The scheme is reasonable and fair to all parties.

2. When the scheme has been approved by all the members, the transferee company and the transferor company should enter into an agreement.

3. A petition should be made to the Tribunal to sanction the scheme and to make orders to

   a. transfer the property to the transferee company

   b. Allot the shares of the transferor company to its members.

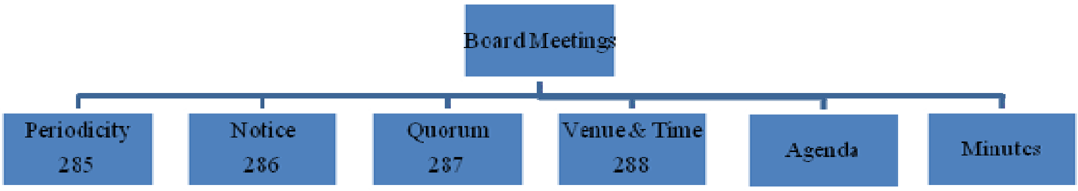
4. The Transferor company has to inform the public through a notice that a petition has been made to the Tribunal. Any interested person may object on the day the petition is to be heard. If there are no objections, the Tribunal may sanction the scheme.

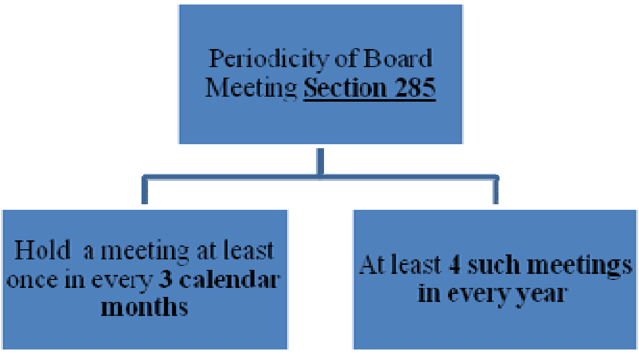
5. Within thirty days after the making of an order under this section, every company in relation to which the order is made shall file a certified copy with the Registrar for registration.

6. The agreement is then implemented.

1. (b).

The legal requirements to be complied with by a public company in respect of Board Meeting is depicted below:



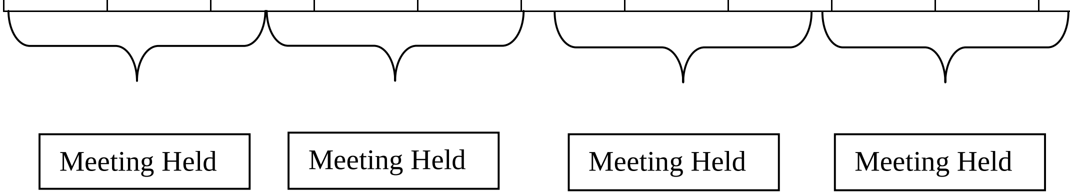


Periodicity

Every Company shall hold a board meeting at least once in every three months and at least four such meetings in every year. (S.285)

Example of Board Meeting

Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec



1. Meeting held once in every three months
2. 4 meetings held in year

Conditions specified in section 285 satisfied.

Notice:

- 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. **(s.286)**
- There is **no** particular form for a notice. If the articles provide that there will be a meeting on a particular day of every month, then there will be no need to serve notice

Case Law: **[Arunachalam Chettiar Vs. Kaleshwarar Mills Ltd** (1957) I.M.L.J.254-A.I.R 1957 Mad.309].

- A meeting **may not** become invalid even if the notice is **not** served, in the following three cases.
  - ✓ The meeting is attended by all the directors.
  - ✓ None of the directors object to the failure in serving notice.
  - ✓ Any absentee directors do not complain against the failure to serve notice. [Re state of Wyoming Syndicate (1901) 2 Ch. 431].

(i) Alternative Director

Yes, notice of Board Meeting is required to be sent to an alternative director **in writing** to for the time being in India and at his usual address in India .

(ii) An interested director

Yes, notice of Board Meeting is required to be sent to an interested director **in writing** to for the time being in India and at his usual address in India.

(iii) A director who has expressed his inability to attend a particular Board Meeting

Yes, notice of Board Meeting is required to be sent even to a director who has expressed his inability to attend a particular Board Meeting **in writing** to for the time being in India and at his usual address in India .

(iv) A Director who has gone abroad

Yes, notice of Board Meeting is required to be sent even to a director who has gone abroad **in writing** to for the time being in India and at his usual address in India.

3.(a) The statutory auditors of Ghosunda Refinery Limited, did not verify the correctness of the particulars furnished in the Board's Report in respect of certain employees under Clause (2A) of the Section 217 of the Companies Acts,1956. State the particulars which are required to be furnished under Clause (2A) of Section 217 of the said Act and also explain the legal position relating to verification of these particulars by the auditors of the said Company.

(b) Modern Chemicals Limited, a listed company, propose to make a preferential issue of equity shares to the promoters of the Company. You are required to answer the following with reference to the Securities and Exchanges Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009:

(i) What are the conditions to be complied with by the Company to give effect to the proposed preferential issue?

(ii) What is the price at which the proposed issue can be made?

(iii) What is the lock-in period in respect of shares of allotted on preferential basis to promoters?

(8Marks)

Solution:

3. (a))

Particulars of Employees 217 (2A)

1. The Board's report shall also include a statement showing the name of every employee of the company who -

   a. if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than 2400000 per year or

   b. if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than Rupees 200000 per month as may be prescribed ;

   c. if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two per cent, of the equity shares of the company.

2. The statement referred to in clause (a) shall also indicate, -

   a. whether any such employee is a relative of any director or manager of the company and if so, the name of such director, and

   b. such other particulars as may be prescribed.

"Remuneration" has the meaning assigned to it in the Explanation to section 198.

The Auditor reports on the Balance Sheet and every document annexed thereto. According to S. 222 references to documents to be annexed does not include the Board’s report. As the particulars of employees forms part of the Balance sheet, the auditors need not verify or report thereon.

3. (b)

(i) Section 72 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 deals with the conditions to be complied with by the Company to give effect to the proposed preferential issue of equity shares to the promoters of the company.

Conditions for preferential issue:

(1) A listed issuer may make a preferential issue of specified securities, if:

(a) a special resolution has been passed by its shareholders;

(b) all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form;

(c) the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed;

(d) the issuer has obtained the Permanent Account Number of the proposed allottees.

(2) The issuer shall not make preferential issue of specified securities to any person who has sold any equity shares of the issuer during the six months preceding the relevant date:

(3) In respect of the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, the Board may grant relaxation from the requirements sub-regulation, if the Board has granted relaxation in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to such preferential allotment.

(ii) Section 76 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 deals with the price at which the proposed preferential issue of equity shares to the promoters of the company can be made.

Pricing of equity shares.

(1) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of six months or more as on the relevant date, the equity shares shall be allotted at a price not less than higher of the following:

(a) The average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during the six months preceding the relevant date; or

(b) The average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(2) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than six months as on the relevant date, the equity shares shall be allotted at a price not less than the higher of the following:

(a) the price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, pursuant to which the equity shares of the issuer were listed, as the case may be; or

(b) the average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during the period shares have been listed preceding the relevant date; or

(c) the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(3) Where the price of the equity shares is determined in terms of sub-regulation (2), such price shall be recomputed by the issuer on completion of six months from the date of listing on a recognised stock exchange with reference to the average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during these six months and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

(4) Any preferential issue of specified securities, to qualified institutional buyers not exceeding five in number, shall be made at a price not less than the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(iii) Section 78 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 deals with the lock-in period in respect of shares allotted on preferential basis to promoters.

Lock-in of specified securities.

(1) The specified securities allotted on preferential basis to promoter or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to promoter or promoter group, shall be locked-in for a period of three years from the date of allotment of the specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be:

Provided that not more than twenty per cent. of the total capital of the issuer shall be locked-in for three years from the date of allotment:

Provided further that equity shares allotted in excess of the twenty per cent. shall be locked-in for one year from the date of their allotment pursuant to exercise of options or otherwise, as the case may be.

(2) The specified securities allotted on preferential basis to persons other than promoter and promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to such persons shall be locked in for a period of one year from the date of their allotment.

(3) The lock-in of equity shares allotted pursuant to conversion of convertible securities other than warrants, issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in.

(4) The equity shares issued on preferential basis pursuant to a scheme of corporate debt restructuring as per the Corporate Debt Restructuring framework specified by the Reserve Bank of India shall be locked-in for a period of one year from the date of allotment:

Provided that partly paid up equity shares, if any, shall be locked-in from the date of allotment and the lock-in shall end on the expiry of one year from the date when such equity shares become fully paid up.

(5) If the amount payable by the allottee, in case of re-calculation of price under sub-regulation (3) of regulation 76 is not paid till the expiry of lock-in period, the equity shares shall continue to be locked in till such amount is paid by the allottee.

(6) The entire pre-preferential allotment shareholding of the allottees, if any, shall be locked-in from the relevant date upto a period of six months from the date of preferential allotment.

4(a) Mr. Kishore is a Director of AB Limited and PQ Limited. AB Limited was regular in filing the Annual Returns but did not file annual accounts for the years ended 31st march,2009, 2010,and 2011. AB Limited did not pay interest on loans taken from a public financial institution from 1st April, 2011and also failed to repay matured deposits taken from public on due dates from 1st April, 2012 onwards.

Answer the following in the light of relevant provisions of the Companies Act, 1956:

(i) Whether Mr. Kishore is disqualified under Section 274 (1) (g) of the Companies Act, 1956 and if so, whether he can continue as a Director in AB Limited and also seeks reappointment when he retires by rotation at the Annual General Meeting of PQ Limited to be held in September, 2013?

(ii) Mr. Kishore is proposed to be appointed as Additional Director in XY Limited in June, 2013. Is he eligible to be appointed as Additional Director in XY Limited?

(b) Morbani Woods Limited decide to appoint Mr. Wahid as its Managing Director for a period of 5 years with effect from 1st May, 2013. Mr. Wahid Fulfils all the conditions as specified in Part I and II of Schedule XIII of the Companies Act, 1956.

The terms of appointments are as under:

(i) Salary ` 1 lakh per month;

(ii) Commission, as may be decided by the Board of Directors of the company;

(iii) Perquisites:

Free Housing,

Medical reimbursement upto ` 10,000 per month,

Leave Travel concession for the family,

Club membership fee,

Personal Accident Insurance ` 10 lakh,

Gratuity, and

Provident fund as per Company's policy.

You, being the Secretary of the said Company, are required to draft a resolution to give effect to the above, assuming that Mr. Whaid is already the Managing Director in a public limited company.

(8 Marks)

Solution:

4. (a)

(i) As per Section 274 (1) (g) of the Companies Act, 1956 following persons shall be disqualified from being appointed as director. Such person is already a director of a public Company.

That public company

(a) Has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April 1999

or

(b) Has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more

Then, such person shall not be eligible to be appointed as a director of any OTHER public Company for a period of five years from the date on which such public Company in which he is a director failed to file annual accounts and annual returns under sub-clause (a) or has failed to repay its deposit or interest or redeem its debentures on due date or pay dividend referred to in clause (b).

(a) AB Limited has filed the annual accounts and annual returns for the years 31st March 2009, 2010 and 2011 and has failed to repay matured deposits taken from public on due dates from 1st April, 2012 onwards. A person who is disqualified under S.274 (1) (g) cannot be appointed (or reappointed) as a director of any other Public Company for a period of five years. Therefore, Mr. Kishore cannot be reappointed in PQ Ltd. on the expiry of his term of office. . But, he can be reappointed as a director of ABC Ltd., as the disqualification under s. 274 (1) (g) applies only to appointment in OTHER public companies.

(b) A person who is disqualified under S.274 (1) (g) cannot be appointed (or reappointed) as a director of any other Public Company for a period of five years. Therefore, Mr. Kishore cannot be appointed by the Board of Directors of XY Ltd., as an additional director at the Board meeting to be held on June, 2013.

4. (b)

RESOLVED THAT pursuant to the provisions of sections 198, 269, 309, schedule XIII, subject to the approval of the members at the ensuing general meeting, further subject to an overall limit of 5% of the net profits of the company for each financial year computed in the manner prescribed in section 349 and 350 of the companies act, 1956 the company hereby approves the remuneration payable to Mr.Wahid , managing director with effect from 1st May, 2013 for a period of 5 years as follows:

a. Salary: Rs. 1 lakh per month in the range of Rs………. - Rs……….

b. Allowance: Allowances, like house rent allowance, leave travel Allowance, Leave travel Allowance, personal allowance special allowance and /or any other allowance as determined by board the aggregate of which per annum shall not exceed the annual salary.

c. Incentive:As determined by the Board for each year but not exceeding the annual salary.

d. Perquisites

i) Accommodation : Furnished/ unfurnished accommodation to be provided by the company free of cost.

ii) Medical reimbursement : Rs. 10,000 per month for Mr. Wahid and his family subject to the company's medical scheme which is in force from time to time.

iii) Club fees : Subscription fees for two clubs. Entrance fee for one club subject to the company's rules in force from time to time.

iv) Provident fund/ super Annuation fund : Contribution to the provident Fund and super Annuation Fund shall be in accordance with the approved scheme of the company as in force from time to time.

v) Gratuity : Gratuity payable in accordance with the rules of the approved scheme of the company as in force from time to time.

vi) Transportation: Provision of two cars (including cost of fuel, insurance and maintenance) as per the rules of the company in force from time to time.

vii) Leave Travel concession for the family: LTC to be given to Mr. Wahid and his family at the rate of Rs……….

viii) Personal Accident Insurance: A policy for personal accident insurance to be taken for Mr. Wahid for an amount of Rs. 10 lakh.

ix) Encashment of leave not availed of: As per prevailing scheme of the company

x) Provision of consumer durables and other assets under the company's furniture scheme. As per prevailing scheme of the company.

xi) Housing loan : As per the company's Housing loan scheme in force from time to time with reference to Mr. Wahid grade or interest subsidy towards housing loan availed by Mr. Wahid for an amount as may be determined by the Board.

xii) Other perquisites Any other perquisites, benefits amenities as applicable to senior management staff of the company from time to time, the perquisite value of which shall not exceed three months salary.

e. General

a) Provision of telephone at residence (including payment of local calls and long distance official calls) shall not be reckoned as perquisites.

b) For the purpose of the above perquisites shall be valued as per income Tax rules. In the absence of any such Rule, perquisites shall be valued at actual cost.

RESOLVED FURTHER THAT in the event of inadequacy or absence or profits Mr. Wahid shall be entitled to such remuneration as determined by the board in this regard

5.(a) What is meant by "misfeasance"? Who can initiate misfeasance proceedings and is there any time limit for initiating such proceedings? Examine the extent to which the legal representative of a deceased Director, against whom misfeasance proceedings were initiated, can be held liable under the provisions of the Companies Act, 1956.

(8 Marks)

(b) The Board of Directors of a newly incorporated Banking Company is required to file the accounts and Balance sheet. Advise the Board of Directors about the law relating to preparation, signing and filing of accounts and Balance sheet under the provisions of the Banking Regulation Act. 1949. Also state the applicability of the provisions of the Companies Act, 1956 in this regard.

(8 Marks)

Solution:

5 a)

Misfeasance refers to a misdeed or trespass. The improper performance of some act which a man may lawfully do. It amounts doing right things in the wrong way. Section 244 of the Companies Act, 1956 deals with misfeasance proceedings.

Recovery of damages or property (S.244)

While prosecuting the perpetrators of misfeascance would no doubt be in order from a statutory point of view, the true culprits who have committed fraud or misapplied the funds of the company or wrongfully retained its property may go Scot-free. This section addresses this issue and empowers the Central Government to bring about action for recovery of damages or property.

It may appear to the Central Government that proceedings ought, in the public interest to be brought by the company or other body corporate for

a. The recovery of damages in respect of fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs of such company or other body corporate; or
b. The recovery of any property of such company or other body corporate, which has been misapplied or wrongfully retained.

   Then, the Central Government may itself bring proceedings for that purpose in the name of such company or body corporate.

   Now, it is quite possible that costs or expenses may be incurred by the company in connection with any proceeding mentioned above. The Central Government shall indemnify the company or body corporate against any such costs or expenses incurred by it.

Legal representatives of the deceased Director, against whom misfeasance proceedings were inititated, can be held liable only to the extent of damages or property which were liable to be recovered from the deceased director as per the provisions of the Companies Act, 1956.

5.(b) reference may be made to the relevant provisions of the banking regulation Act reproduced below:

29. Accounts and balance-sheet. —(1) At the expiration of each calendar year 101[or at the expiration of a period of twelve months ending with such date102 as the Central Government may, by notification in the Official Gazette, specify in this behalf,] every banking company incorporated 95[in India], in respect of all business transacted by it, and every banking company incorporated 103[outside India], in respect of all business transacted through its branches 104[in India], shall prepare with reference to 105[that year or period, as the case may be,] a balance-sheet and profit and loss account as on the last working day of 106[that year or the period, as the case may be] in the Forms set out in the Third Schedule or as near thereto as circumstances admit:

107[Provided that with a view to facilitating the transition from one period, of accounting to another period of-accounting under this sub-section, the Central Government may, by order published in the Official Gazette, make such provisions as it considers necessary or expedient for the preparation of, or for other matters relating to, the balance sheet or profit and loss account in respect of the concerned year or period, as the case may be.]

(2) The balance-sheet and profit and loss account shall be signed—

(a) in the case of a banking company incorporated 104[in India], by the manager or the principal officer of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors, by all the directors, and

(b) in the case of a banking company incorporated 103[outside India] by the manager or agent of the principal office of the company 104[in India].

(3) Notwithstanding that the balance-sheet of a banking company is under subsection (I) required to be prepared in a form other than the form 108[set out in Part I -of Schedule VI to the Companies Act, 1956 (1 of 1956)], the requirements of that relating to the balance-sheet and profit and loss account of a company shall, in so far as they are not inconsistent with this Act, apply to the balance-sheet or profit and loss account, as the case may be, of a banking company.

109[(3A) Notwithstanding anything to the contrary contained in sub-section (3) of section 210 of the Companies Act, 1956 (1 of 1956), the period to which the profit and loss account relates shall, in the case of a banking company, be the period ending with the last working day of the year immediately preceding the year in which the annual general meeting is held.]

110[Explanation. —In sub-section (3A), "year" means the year or, as the case may be, the period referred to in sub-section (1).]

(4) The Central Government, after giving not less than three months' notice of its mention so to do by a notification in the Official Gazette, may from time to time by a like notification amend the Form set out in the Third Schedule.

32. Copies of balance-sheets and accounts to be sent to registrar. —119[(1) Where a banking company in any year furnishes its accounts and balance-sheet in accordance with the provisions of section 31, it shall at the same time send to the registrar three copies of such accounts and balance-sheet and of the auditor's report, and where such copies are so sent, it shall not be necessary to file with the registrar, in the case of a public company, copies of the accounts and balance-sheet and of the auditor's report, and, in the case of a private company, copies of the balance-sheet and of the auditor's report as required by sub-section (1) of section 220 of the Companies Act, 1956 (1 of 1956); and the copies so sent shall be chargeable with the same fee and shall be dealt with in all respects as if they were filed in accordance with that section.]

(2) When in pursuance of sub-section (2) of section 27 the Reserve Bank requires any additional statement or information in connection with the balance-sheet and accounts furnished under section 31, the banking company shall, when supplying such statement or information, send a copy thereof to the registrar.

6.(a) Southern India Sugar Producer Company Limited, having paid-up capital of ` 5 lakh and free reserves of ` 3 lakh, propose to make the following loans and investments:

(i) Loans of ` 2 lakh to Mr. Ram, a member of the Company, for a period of one year and a loan of ` 1 lakh to Mr. Shekhar, a Director of the Company for a period of six months;

(ii) Investment of ` 3 lakh in the equity shares of XYZ Marketing Limited.

State the restrictions, if any, in this regard and also the legal requirements to be complied with by the Company under the provisions of the Companies Act, 1956.

(8 Marks)

(b) Examine in the light of the provisions of the Companies Act, 1956 whether the following companies can be considered as “Foreign Companies”

(i) A company incorporated outside India having a share registration office at New Delhi;

(ii) A company incorporated outside India having shareholders who are all Indian citizens;

(iii) A company incorporated in India but all the shares are held by foreigners.

Also examine whether the above companies can issue India Depository Receipts under the provisions of the Companies Act, 1956?

Solution:

. (a)

(i) Southern India Sugar Producer Company Limited can make a loan of Rs. 2 lakh to Mr. Ram and Rs. 1 lakh to Mr. Shekhar, a Director of the company, subject to the following conditions:

581ZK deals with Loans to Members and Investments

Loans to members

The Board may, subject to the provisions made in articles, provide financial aid to the Members of the Producer Company by way of—

(a) credit facility, to any Member, in connection with the business of the Producer Company, for a period not exceeding six months;

(b) loans and advances, against security specified in articles to any Member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances

Any loan or advance to any director or his relative shall be granted only after the approval by the Members in general meeting.

(ii) Southern India Sugar Producer Company Limited can make investment of Rs. 3 lakh in the equity shares of XYZ Marketing Limited subject to the following conditions:

Investment in other companies, formation of subsidiaries (581 ZL)

(1) The general reserves of the company should be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government or co-operative or scheduled bank or in such other mode as may be prescribed.

(2) The Company may also acquire the shares of another Producer Company.

(3) Any Producer Company may

1. subscribe to the share capital of, or

2. enter into any agreement or other arrangement

Whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the Producer Company. This may be done by passing a special resolution in this behalf.

(4) Any Producer Company, either by itself or together with its subsidiaries, may invest, by way of subscription, purchase or otherwise, shares in any other company, other than a Producer Company, specified in sub section (2) or subscription of capital under sub section (3) for an amount not exceeding thirty per cent. of the aggregate of its paid-up capital and free reserves. A Producer Company may, by a special resolution passed and with prior approval of the Central Government, invest more than the limits specified in this section.

(5) All investments made should be consistent with the objects of the Producer Company.

(6) The Board may, with the previous approval of Members by a special resolution, dispose of any of its investments referred to under sub sections (3) and (4).

(7) Every Producer Company shall maintain a register containing particulars of all the investments, showing the names of the companies in which shares have been acquired, number and value of shares; the date of acquisition; and the manner and price at which any of the shares have been subsequently disposed of. (8) The register referred to in sub-section (7) shall be kept at the registered office of the Producer Company and the same shall be open to inspection by any Member who may take extracts there from.

6**. (b)**

(i) “Foreign Company” as per section 591 of the companies act, 1956, means a company incorporated outside India but having a place of business in India.

Accordingly to qualify foreign company a company must have both the following features: -

(a) It should be incorporated outside India

(b) It should have a place of business in India.

As to what amount to having a place of business in India, section 602(e) provides that expression “place of business” includes a share transfer or share registration office.

Thus a company incorporated outside India having a share registration office at New Delhi is a foreign company.

(ii) Company incorporated outside India for the purpose of carrying on business outside India is not a foreign company.

Its incorporation by Indian citizens is immaterial

In order to be a foreign company it must have a place of business in India.

(iii) Company incorporated in India for the purpose of carrying on business in India is not a foreign company.

Its incorporation by foreigners is immaterial

In order to be a foreign company should be incorporated outside India.

7. Attempt any four:

(4 Marks)

(a) Mr. Kishore resided in India during the Financial Year 2009-2010 for less then 182 days. He came to India on 1st April, 2010 for business. He closed down his business on 30th April, 2011 and left India on 30th June, 2011 for the purpose of employment outside India. Decide the residential status of Mr. Kishore during the Financial Year 2010-2011 and 2011-2012 under the provisions of the Foreign Exchange Management Act, 1999.

(4 Marks)

(b) Bombay Textiles Limited and Gujarat Textiles Limited marketing their products in India propose to be amalgamated. The enterprise created as a result of the said amalgamation will have assets of value of ` 300 crore and turnover of ` 1000 crore. Examine whether the proposed amalgamation attracts the provisions of the Competition Act, 2002?

(c) “ Money Laundering” does not mean just siphoning of fund.”

Comment on this statement explaining the significance and aim of the Prevention of Money Laundering Act, 2002.

(4 Marks)

(d) Explain briefly the concept of “Securitisation” under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(4 Marks)

(e) Section 294 (2) of the Companies Act, 1956 provides that “the Board shall not appoint a Sole Selling Agent for any area except subject to the condition that the appointment shall cease to be valid if it is not approved by the appointment is made.”

Examine whether the procedure under the above provision is mandatory or directory?

State also the distinction between a mandatory provision and a directory provision.

Solution:

7. (a) Mr. Kishore has been in India for less than 182 days during the year 2009-2010. Therefore he is a person resident outside India during the year 2010-2011.

Mr.Kishore left India on 30th April, 2011 for the purpose of employment. But he was in India throughout the year 2010-11 and thus he is a person resident in India during the year 2011-2012.

7. (b) Merger or Amalgamation

(i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be have

Domicile		**Value of Assets**	**Turnover**
A	In India	More than Rupees One Thousand Crores	More than Rupees Three Thousand Crores
B	In India or Outside India	In aggregate More than USD 500 Million (including at least Rs.500 Crores in India)	In aggregate More than USD 1500 Million (including at least Rs.1500 Crores in India)

or

(ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,—

Domicile		**Value of Assets**	**Turnover**
A	In India	More than Rupees Four Thousand Crores	More than Rupees Twelve Thousand Crores
B	In India or Outside India	In aggregate More than USD Two Billion (including at least Rs.500 Crores in India)	In aggregate More than USD Six Billion (including at least Rs.1500 Crores in India)

Since the enterprise created as result of the amalgamation of Bombay Textiles Limited and Gujarat Textiles Limited will have assets of value Rs. 300 crore and turnover of Rs. 1000 crore the provisions of the Competition Act, 2002 will not be attracted

7. (c) **The Prevention of Money Laundering Act, 2002**

Introduction

In India, the Anti Money Laundering (AML) measures are controlled through the Prevention of Money Laundering Act, 2002 which was brought in force with effect from 1st July 2005. RBI, SEBI and IRDA have been brought under the PML Act, and therefore it will be applicable to all financial institutions, banks, mutual funds, insurance companies, and their financial intermediaries. The agency monitoring the AML activities in India is called Financial Intelligence Unit (FIU IND) and compliance is required by all financial intermediaries.

Money laundering has become a world-wide menace. The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardizing their source.

Background

The Act implements the Political Declaration adopted by the Special Session of the UN General Assembly, 1999 which called upon the Member-States to adopt money-laundering legislation and programme. Accordingly, in India the Act was enacted after incorporating the recommendations of the Standing Committee on finance presented to the Lok Sabha on 4th March, 1999. The Act thereafter was incorporated and enacted on 17th January, 2003

What is Money Laundering?

S. 3 of the Act describes Money Laundering as any process or activity connected with the **proceeds of crime** and projecting it as untainted property.

a. Whosoever directly or indirectly attempts to indulge in or
b. knowingly assists or
c. knowingly is a party to or
d. is actually involved in
e. the above activity
f. shall be guilty of the offence of Money Laundering.

Proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a **scheduled offence** or the value of any such property.

"Dirty money" is the proceeds derived from criminal conduct. Money laundering is the processing of "dirty money" in order to disguise its illegal origin. This would enable criminals make the money look like it came from a legitimate source.

Money laundering is the process of moving "proceeds of crime" or "Dirty Money" through financial systems so that it appears to be legally acquired.

7. (d) Securitisation:

Definition:

As per Section 2(1) (z) “Securitisation” means

- acquisition of financial assets by any securitization company or reconstruction company ;
- from an originator;
- whether by raising of funds by such securitization or reconstruction company;
- from qualified institutional buyers;
- by issue of security receipts representing undivided interest in such financial asset of otherwise.

Meaning:

- Securitisation is the issuance of marketable securities backed not by the expected capacity to repay of a private corporation or public sector entity, but by the expected cash flows from specific assets;
  - Securitisation is a process by which the 'originators' of assets like loans which are illiquid, are able to transfer such assets to a 'special purpose vehicle' ("SPV"), which in turn, issues tradable liquid securities to investors;
  - The transactions can be structured with a wide variety of 'credit enhancement' to make the deals attractive to investors. 'Guarantees of credit quality' is the most important transaction.

Motives for Securitisation:

The following are the primary motives for securitization:

(1) The securitized assets go off the balance sheet of the originator and so the asset-base is pruned down to that extent and thereby reducing the regulatory capital requirements to support the assets;

(2) The asset portfolio is liquidated,, releasing cash, which in turn reduces the need for demand and time liabilities that are subject to statutory reserves.

7. (e)

- Let us first appreciate the distinction between mandatory and directory provisions.
- Where the enactment or provision prescribes that the contemplated action be taken without any option or discretion, then such statute or provision or enactment will be called mandatory.
- Where, the acting authority is vested with discretion, choice or judgment, the statute or provision will be called directory.
- In deciding whether the statute is directory or mandatory, the question is whether there is anything that makes it the duty of the person on whom the power is conferred to exercise that power.
- If it is so then the Statute is a mandatory one; otherwise it is directory.
- The words 'may', 'shall', and 'must' should initially be deemed to have been used in their natural and ordinary sense.
- 'May' signifies permission and implies that the authority has been allowed discretion. "Shall" in the normal sense imports a command. 'Must' is doubtlessly a word of command. In all cases, however, the intention of the legislature will guide the interpreter in his search of meaning.

Thus, S. 294 (20 which uses the word shall is a mandatory provision.