

PAPER – 4 : CORPORATE AND ALLIED LAWS

QUESTIONS

SECTION – A : COMPANY LAW

Accounts

1. (i) Sunshine Ltd., whose year ended on 31st March, 2010, held its annual general meeting on 30th September, 2010. The meeting transacted all other businesses except the accounts as they were not ready and adjourned the meeting to 20th December, 2010 for consideration of accounts. The Registrar of Companies issued show cause notice for violation of section 210 of the Companies Act, 1956. Advice.
- (ii) XYZ Limited did not prepare its Balance Sheet as at 31st March, 2010 and the Profit and Loss Account for the year ended on that date in conformity with some of the mandatory Accounting Standards issued by the Institute of Chartered Accountants of India. You are required to state with reference to the provisions of the Companies Act, 1956, the responsibilities of directors and statutory auditor of the company in this regard.

Audit

2. (i) Can a person holding any security of a company be appointed as an Auditor of that Company? What will be the position, if his relative holds such securities?
- (ii) Shyam & Company was appointed as auditor of ABC Ltd. at the Annual General Meeting held on 30th September, 2009. Can Shyam & Co. continue as auditor of the company in case the next annual general meeting has not been held in time? What would be the position in case the next annual general meeting was held on 30th September, 2010, but adjourned without considering the business of appointment or re-appointment of auditor?

Dividend

3. Fortune Ltd. made a loss of Rs. 20 lakhs after providing for depreciation for the year ended 31st March, 2010 and as a result the company was not in a position to declare any dividend for the said year out of profits. However, the Board of Directors of the company announced the declaration of dividend of 15% on the equity shares payable out of free reserves. The paid up share capital of the company and its free reserves as on 31st March, 2010 are Rs. Two crores and Ten crores respectively. The average dividend declared by the Company in the last five years is 25%. Examine the validity of declaration of dividend.

Directors

4. (i) The promoters of a Public Company propose to have the strength of the Board of Directors as eleven. They also propose to make the Managing Director and whole-time Directors as Directors not liable to retire by rotation. They seek your advice on the following matters:

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- (a) Maximum number of persons, who can be appointed as Directors not liable to retire by rotation.
- (b) How many of the remaining Directors will have to retire by rotation every year at the Annual General Meeting?

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

- (ii) As per their Articles of Association the maximum number of Directors of each of the following companies is 9:
 - (a) Goodheart Limited.
 - (b) Frontline Trading Private Limited.
 - (c) Hindustan Zink limited (a Government company under section 617 of the Companies Act, 1956).

The Board of Directors of the aforesaid companies proposes to increase the number of Directors to 15. Advise, whether under the provisions of the Companies Act, 1956, the Board of Directors can do so?

- 5. (i) With reference to the provisions of the Companies Act, 1956 examine the validity of the following:

D, who is a director already in 14 public limited companies accepts the directorships of the following companies:

 - (a) BC Private Limited, which is the holding company of a public limited company.
 - (b) RM Company which is an unlimited company
- (ii) Prince Ltd., desires to appoint an additional director on its board of directors. The Articles of the company confer upon the board to exercise the power to appoint such a director. As such M is appointed as an additional director. In the light of the provisions of the Companies Act, 1956, examine:
 - (a) Whether M can continue as director if the annual general meeting of the company is not held within the stipulated period and is adjourned to a later date?
 - (b) Can the power of appointing additional director be exercised by the Annual General Meeting?
 - (c) As the Secretary of the company what checks would you make after M is appointed as an additional director?
- 6. The Directors of Fashion Ltd. desire to authorise the Managing Director to enter into the following transactions namely- (a) invest from time to time surplus funds in the purchase of shares of other companies; (b) borrow from banks money required for the purpose; (c) give loans to person, including firms in which Directors or their relatives are partners; (d) give donations to charitable trusts in which any of the Directors may be interested as trustees. Discuss.

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Meetings, Powers of the Boards and Related Party Transaction

7. (i) Annual general Meeting of a Public Company was held on 28th December, 2008. This was adjourned to 31st March, 2009 and then held. Thereafter the next Annual General Meeting was held on 28th February, 2010. An action is brought against the company for not holding an Annual General Meeting in 2009. It is contended on behalf of the company that a meeting was held in that year. Decide giving reasons.
- (ii) A director goes abroad for a period of more than 3 months and an alternate director has been appointed in his place under Section 313(1) of the Companies Act, 1956. During the period of absence of the original director, a board meeting was called. In this connection, with reference to the provisions of the Companies Act, 1956, advise whom should the notice of Board meeting be given to the "original director" or to the "alternate director"?
8. (i) Notices were posted on October 16, for a General Meeting of a 'Listed Public Company' to be held on November 7. The validity of the notice is challenged. Decide.
- (ii) Examine the validity of the following:
- (a) Proceedings of Annual General Meeting of a Public Company not held in time.
 - (b) Appointment of a proxy by a person authorised to represent a Body Corporate at a General Meeting of a Company of which the body corporate is a member.
 - (c) Fresh Proxies deposited by members in respect of adjourned Annual General Meeting.
 - (d) Casting vote by the Chairman of a General Meeting of a Company in respect of a Special Resolution.

Inspection and Investigation

9. (i) Mr. Ramesh and his group hold more than 50% of the equity share capital of Progressive Realtors Ltd. Dissatisfied with the performance of the company, Mr. Ramesh sends a notice to the Board of Directors about his intention to inspect the account books of the company. Explain the provisions of the Companies Act, 1956 regarding the persons who can inspect the books of account and the right of Mr. Ramesh in this matter.
- (ii) The Registrar of Companies, West Bengal has received a complaint from a group of creditors of a company. The complaint alleges that the Directors of the company, in order to prevent the unearthing of their embezzlement of company's funds, are engaged in falsification and destruction of original accounting books and records. The complaints urged the Registrar to seize the accounting books and records of the company so that the Directors may not be able to tamper the same. You are required to state the powers, if any, of the Registrar in this respect.

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Compromise, Arrangements and Reconstructions

10. (i) ABC Ltd. was amalgamated with, and merged in XYZ Ltd. Some workers of ABC Ltd refused to join as workers of XYZ Ltd. and claim compensation for premature termination of service. XYZ Ltd. resists the claim on the ground that their services are transferred to ABC Ltd. by the order of amalgamation and merger and therefore the workers must join service of XYZ Ltd. and cannot claim any compensation. Who will succeed-the workers of ABC Ltd or the XYZ Ltd? Give reasons.
- (ii) Answer the following explaining the relevant provisions of the Companies Act, 1956:
- (a) Whether the Companies being amalgamated must be Companies registered under the Companies Act, 1956.
- (b) Whether the Companies seeking sanction of the court for a scheme of amalgamation must have specific power to amalgamate in the object clause of their Memorandum of Association.

Prevention of Oppression and Mismanagement

11. A group of shareholders consisting of 25 members decides to file a petition before the Company Law Board for relief against oppression and mismanagement by the Board of Directors of M/s Fly By Nigh Operators Ltd. The company has a total of 300 members and the group of 25 members holds one-tenth of the total paid-up share capital accounting for one-fifteenth of the issued share capital. The main grievance of the group is that due to mismanagement by the Board of Directors, the company is incurring losses and the company has not declared any dividends even when profits were available in the past years for declaration of dividend. Advise the group of shareholders regarding the success of (i) getting the petition admitted and (ii) obtaining relief from the Company Law Board.
12. ABC Private Limited is a company in which there are eight shareholders. It is alleged by a member holding less than one-tenth of the share capital that the directors of the company have misused their position in making certain inter-corporate deposits which are against the interests of the company. Will the Company Law Board entertain application containing such allegation in the case of a private company?

Corporate Winding up and Dissolution

13. (i) Info-tech Overtrading Ltd. was ordered to be wound up compulsory by an order dated 15th October, 2007 of the Delhi High Court. The official liquidator who has taken control for the assets and other records of the company has noticed the following:
- (a) The Managing Director of the company has sold certain properties belonging to the company to a private company in which his son was interested causing loss to the company to the extent of Rs. 50 lakhs. The sale took place on 10th May, 2007.

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- (b) The company created a floating charge on 1st January, 2007 in favour of a private bank for the overdraft facility to the extent of Rs. 5 crores, by hypothecating the current assets viz., stocks and book debts.

Examine what action the official liquidator can take in this matter having regard to the provisions of the Companies Act, 1956.

- (ii) XYZ Limited is being wound up by the Court. The official liquidator after realisation of the assets has an amount of Rs. 56,00,000 at his disposal towards payment of creditors of the company. Details of creditors are as under:

	Rs.
(i) Dues to secured creditors	40,00,000
(ii) Dues to workers	30,00,000
(iii) Taxes and duties payable to Government authorities	4,00,000
(iv) Unsecured creditors	80,00,000

Since the available amount is insufficient to meet the claims of all the creditors, explain the procedure to be followed for payment of dues as provided in the Companies Act, 1956, assuming that the company has created a charge on all the assets of the company in favour of the secured creditors.

Producer company

- 14 (i) The existing Inter-state Cooperative Society seeks your advice regarding the papers to be submitted to the Registrar of Companies for its registration as a Producer Company under the provisions of the Companies Act, 1956. You are required to prepare a list of such papers.
- (ii) A group of individuals eligible to form a Producer Company within the meaning of the Companies Act, 1956 has entrusted you with the job of preparing the Memorandum of Association of the proposed Producer Company. You are required to state the matters, which are required to be included in such Memorandum of Association.

E-governance

15. What is Director Identification Number (DIN)? What are the grounds for rejection of DIN application?

Companies Incorporated outside India

16. (i) As per provisions of the Companies Act, 1956, what is the status of XYZ Ltd., a Company incorporated in London, U.K., which has a Share Transfer Office at Mumbai?
- (ii) ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 1956. You are required to state, where the said company should deliver such documents.

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- (iii) In case, a foreign company does not deliver its documents to the Registrar of Companies as required under Section 597 of the Companies Act, 1956, state the penalty prescribed under the said Act, which can be levied.

Corporate Secretarial Practice

- 17. (i) Board of Directors of DBM Limited held a board meeting on 2nd May, 2010 at its registered office.
You are required to state the salient points to be taken into account while drafting the minutes of the said board meeting.
- (ii) Draft a board resolution for appointment of Mr. Paul as the managing director for 5 years with effect from 1st June, 2010 of DBM Limited passed in the above stated board meeting.

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The Securities and Exchange Board of India

- 18. What are the Common restrictions for issuers in case of public and rights issues?
- 19. Following information is available from the Records of Chirag Chemicals & Engineering Ltd.:
 - (i) The company is a closely held unlisted company.
 - (ii) The paid up share capital of the company since 1st April, 2001 is Rs.3.00 crores and its net worth as at 31st March,2010 was Rs. 5.00 crores as per audited Balance Sheet.
 - (iii) The Net Tangible Assets of the company as per last 3(three) audited Balance Sheets as at 31st March, 2007, 2008 and 2009 were Rs.4.00 crores, 4.50 crores and 5.00 crores respectively, out of which monetary assets were less than Rs. 50 lacs in each of the three years.
 - (iv) The company was incorporated in 1998 and commenced its business on 1st April, 1998 and since then it has earned good profits and it has not incurred any loss in any year in past.
 - (v) The company has not declared any dividend so far, but according to the profits earned so far, the management could have declared the dividend in each of the last five years.
 - (vi) The name of the company was changed from Star Engineering Ltd. to its present name with effect from 1st January, 2009
 - (vii) The company's turnover in the years ended 31st March, 2008, 2009 and 2010 was Rs.20 crores, 30 crores and 35 crores respectively.

The company wants to make a public issue of shares to raise Rs. 20.00 crores by issuing equity shares at premium. For the purpose of including the information in the prospectus,

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the Company has prepared its accounts for 12 months ended 31st December, 2009 showing segment wise revenue which reveals that revenue from chemical segment is more than the revenue from Engineering segment.

You are required to state the relevant guidelines issued by SEBI and your conclusion whether the Company can make the desired issue of equity shares based on the facts stated above.

Securities Contracts (Regulation) Act, 1956

20. (i) Describe the provisions of the Securities Contracts (Regulation) Act, 1956 regarding the powers of the Central Government to supersede the Governing Body of a recognized Stock Exchange and the consequences of such supersession.
- (ii) The Executive Committee of a recognized Stock Exchange desires to transfer certain duties and functions of a clearing house to a recently set up Clearing Corporation, incorporated as a company under the Companies Act, 1956. Examining the provisions of the Securities Contracts (Regulation) Act, 1956:
- (a) State the purpose for which such transfer of duties and functions can be made to Clearing Corporation.
- (b) What is the procedure to be adopted for such transfer of duties and functions?

Foreign Exchange Management Act, 1999

21. (i) Explain the meaning of the term 'Capital Account Transaction' under the Foreign Exchange Management Act, 1999. State whether there are any restriction in respect of the following transactions:
- (a) Drawal of Foreign Exchange for payments due on account of Amortization of Loans.
- (b) Purchase of Shares of a company engaged in plantation activities by a persons Resident Outside India.
- (ii) Mr. X resided in India during the Financial year 2009-2010. He left India on 1st August, 2010 for United States of America for pursuing Higher Studies for three years. What would be his residential status during the Financial Year 2010-2011 under FEMA, 1999?

The Competition Act, 2002

22. (i) In a proceeding before the Competition Commission of India involving two Pharmaceutical companies, the plaintiff requested the presiding officer to call upon the services of experts from the pharmaceutical sector to determine the truth of the allegations leveled by it against the respondent. The respondent opposed the request on the ground that such action cannot be taken by the Competition Commission. You are required to state with reference to the provisions of the Competition Act, 2002, whether the contention of the respondent is tenable.
- (ii) The Central Government has formed as opinion that Mr. CBM (a member of the

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Competition Commission of India) has acquired such financial interest that it may affect prejudicially his functions as a member of the Competition Commission and it wants to remove him from his office. You are required to state with reference to the provisions of the Competition Act, 2002, whether the Central Government can do so and if yes, how?

Interpretation of Statutes, Deeds and Documents

23. (i) What is the effect of a Proviso? Does it qualify the main provisions of an Enactment? Does an explanation added to a section widen the ambit of the section?
- (ii) Briefly discuss the Rule of 'ejusdem generis' as applied in the interpretation of statute.

Banking Regulation Act, 1949, The Insurance Act, 1938. The Insurance Regulatory and Development Authority Act, 1999. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

24. (i) Explain the provision relation to Reserve Fund under the Banking Regulation Act, 1949.
- (ii) How disputes are resolved under the SARFAESI Act, 2002?

Prevention of Money Laundering Act, 2002

25. What is Money Laundering? What is the punishment for the offence of money laundering?

SUGGESTED ANSWERS/HINTS

1. (i) As per Section 166(1) of the Companies Act, 1956, every company must hold its first annual general meeting within 18 months of its incorporation and subsequently one in each calendar year. Not more than 15 months shall elapse between the two annual general meetings. Powers are vested in the Registrar of Companies to grant extension of time up to 3 months for holding an annual general meeting for genuine reasons (Accounts not being ready is considered as a valid reason for this extension).

Section 210(3)(b) provides that every company should lay before every subsequent annual general meeting its annual accounts within six months or the extended period for holding annual general meeting, if any, granted by the Registrar of Companies, from the date of closure of the accounts.

In the given case, Sunshine Ltd. convened and held the annual general meeting within six months from date of closure of the accounts, but failed to lay the accounts within the six months and it had also not obtained permission for extension of time for holding annual general meeting under second proviso to sub-section (1) of

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Section 166 from the Registrar of Companies. Hence, it has violated the provisions of section 210 of the Act and Registrar of Companies was justified in issuing the show-cause notice.

- (ii) Where the Profit and Loss Account and the Balance sheet of the company do not comply with the Accounting Standards read with Section 211 of the Companies Act, 1956, such companies shall disclose in its Profit and Loss account and Balance Sheet, the following:
- (a) the deviation from the accounting standards;
 - (b) the reasons for such deviation; and
 - (c) the financial effect, if any, arising due to such deviation.

According to sections 211 (7) and (8) read with section 209 (6) of the Companies Act, 1956 following persons are responsible for complying with the above requirements:

- (a) the managing director or manager of the company, if any,
- (b) all officers and employees of the company, and
- (c) if the company does not have a managing director or manager, then every director of the company.

In view of the above provisions of the Companies Act, 1956, the managing director/directors have a responsibility to ensure that in case of non-compliance of any mandatory Accounting Standards, proper disclosure is made in the Profit & Loss account and the Balance Sheet. Moreover, the Board of Directors is also required under Section 217 of the Companies Act, 1956 to include a Directors Responsibility Statement indicating therein that in the preparation of the annual accounts the applicable accounting standards have been followed along with proper explanation relating to material departures.

Responsibilities of auditors:

As per section 227(3) (d) of the Companies Act, 1956, the statutory auditor's responsibility is to state in his report, whether in his opinion, the profit and loss account and balance sheet comply with the accounting standards referred to in sub-section 211 of the Companies Act, 1956.

2. (i) A person holding any security of a company after a period of one year from the commencement of the Companies (Amendment) Act, 2000 shall be disqualified for appointment as auditor of that company. [Section 226 (3) (e)] For the purpose of this section, the term "Security" means an instrument which carries voting rights. A person shall not be qualified for appointment as auditor of a company if he is, by virtue of sub-section (3) disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or would be so disqualified if the body corporate were a company.

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If an auditor becomes subject, after his appointment, to any of the disqualification specified in sub-section (3) and (4) he shall be deemed to have vacated his office as such. (sub-section (5) of section 226)

From the aforesaid provision it would be clear if a person who held security of a company of which he is auditor shall not be disqualified if he disinvested the share securities. The security is one which carries voting rights of the auditee company before 14.12.2001.

A branch auditor of a company under section 228 shall be disqualified to be appointed as branch auditor if he held securities of the company as stated aforesaid.

Whether the disqualification shall get affected if the security is held in the name of wife or other relatives, is debatable, and the law is not clear on this issue.

(ii) Tenure of auditor

The tenure of an auditor is laid down in section 224(1) of the Companies Act, 1956. It is from the conclusion of the annual general meeting to the conclusion of the next annual general meeting. Therefore, the tenure of office of the auditor does not expire on the last date on which the annual general meeting was due to be held in terms of Section 166. Hence Shyam & Co. can continue as auditor even if the Annual General Meeting for the year 2010 has not been held in time.

In case Annual General Meeting for 2010 was held on 30th September 2010 that adjourned without considering the business of appointment or reappointment of auditor, the tenure of Shyam and Co. will extend till the conclusion of the adjourned meeting.

3. **Powers relating to Declaration of Dividend:** Dividend can be declared by a company for any financial year out of the profits for that year arrived at after providing for depreciation only after transfer to the reserves as prescribed in the Companies (Transfer of Profits to Reserves) Rules 1975. However, dividend can be declared by a company out of accumulated profits subject to the following conditions:

- (a) The rate of dividend declared does not exceed the average of the rates at which dividend was declared by it in the 5 years immediately proceeding that year or 10% of the capital whichever is less.
- (b) The total amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves does not exceed an amount equal to 1/10th of the sum of its paid up capital and free reserves and the amount to be drawn must first be utilized to set off the losses incurred in the financial year before any dividend in respect of equity shares is declared.
- (c) The balance of such reserves after drawl does not fall below 15% of its paid up share capital.

In view of the above, Fortune Ltd. cannot declare 15% of dividend as proposed. However, it can declare 10% dividend provided the conditions stated in (b) & (c) above

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are fulfilled.

4. (i) According to section 255 of the Companies Act, 1956 unless the articles provide for the retirement of all directors, at every annual general meeting, not less than two thirds of the total number of directors of the directors of a public company shall (a) be persons whose period of office is liable to determination by retirement of directors by rotation; and (b) save as otherwise expressly provided on this Act, be appointed by the company in general meeting.

In this case the proposed strength is 11. It is not a multiple of three. Two-third of it is 7.33. The next full number must be taken for the purpose of complying with the requirements of section 255(1). This is because of the words, " not less than" appearing in section 255(1) and this indicates that ignoring the fraction may result in the number taken being less than two - thirds of the directors liable to retire by rotation must be at least 8. The remaining directors may be directors who are liable to retire by rotation. Hence maximum number of directors who is not liable to retire by rotation is 3.

According to Section 256 (1) at the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with section 255 and at every subsequent annual general meeting, one third of such of the directors for the time being are liable to retire by rotation, or if their number is not three or a multiple of three, then, the number nearest to one-third shall retire from office. In this case, the number nearest to one-third is 3 ($8/3 = 2.67$). Hence, at every annual general meeting 3 directors will retire by rotation.

- (ii) As per Section 259 of the Companies Act, 1956, in the case of a company incorporated after 21st July, 1951, any increase in the number of its directors beyond the maximum fixed by its Articles of Association as originally adopted and registered and in the case of a company existing prior to that date, any increase in the number of directors shall not have any effect unless approved by the Central Government, and it is to become void to the extent to which it is disapproved by the Central Government, However, such approval from the Central Government is not required if the number of directors is increased to 12 or less than that.

The above mentioned provision of the Companies Act, 1956 are applicable only to public companies or private companies which are subsidiaries of public companies. Based on the above mentioned provisions, following conclusion can be drawn in respect of companies as mentioned in the question.

In the case of Goodheart Limited, the Directors have to obtain the approval of the Central Government for increasing the number of Directors from 9 to 15.

In the case of Frontline Trading Private Limited (Which is a Private company) and Hindustan Zink Limited (a Government company) the provisions of section 259 of the Companies Act, 1956 are not applicable and hence the directors of these companies can increase the number of directors from 9 to 15 without the approval

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of the Central Government, subject to fulfillment of other procedural requirements.

5. (i) According to Section 275 of the Companies Act, 1956, a person cannot hold office at the same time as director in more than 15 companies, excluding a private company which is not subsidiary or holding company of a public company, an unlimited company, an association not for profit and a company in which such person is only an alternate director (Sections 275 and 278). In making the calculating aforesaid any company referred to in clauses (a), (b) and (c) of sub-section (1) of Section 278, shall be excluded for a period of three months from the date on which the company ceases to fall within the purview of those clauses.

Thus applying the above provisions, D who is a director already in 14 public limited companies and accepts the directorships of the companies stated in the question can accept the directorships as follows:

- (a) He can not accept directorship in BC Private Ltd. as the number of directorship has reached to 15. Directorship in BC Private Ltd. will be counted within 15 as the company in question is the holding company of a public limited company.
 - (b) Since RM Company is an unlimited company, D can accept the directorship in the company, as directorship of an unlimited company is not counted in the said 15.
- (ii) Section 260 of the Companies Act, 1956 empowers the Board of Directors, if authorized by the Articles to appoint additional directors, provided that such additional directors shall hold office only up to the date of the next Annual General Meeting of the company, and the number of the directors including additional directors shall not exceed the maximum strength fixed for the Board by the Articles. These directors also must acquire the qualification shares within the statutory period of 2 months. The appointment of such directors must be in the interest of the general body of shareholders. (*Anantha Lakshmi vs. Indian Traders Ltd. A 1953 Mad. 567*).

Based on the above provisions answers to the given questions shall be as under:

- (a) M cannot continue as director till the adjourned Annual General Meeting, since he can hold the office of directorship only up to the date of the next Annual General Meeting. Such an additional director shall vacate his office latest on the date on which the Annual General Meeting could have been held under Section 166. He cannot continue in the office on the ground that the meeting was not held or could not be called within the time prescribed. (*Krishna Prasad Pilani v. Colaba Land Mills Co. 29 Comp. Case. 273*)
- (b) Where the articles have conferred the power of appointing additional directors on the Board of Directors, the company in a general meeting is precluded from appointing additional director. (*Blair Open Hearth Furnance Co. vs Reigart, (1913) 108 L.T. 665*). However, though in ordinary circumstances the company in general meeting is precluded from appointing such directors yet if owing to

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a deadlock or otherwise there is no board capable of making the necessary appointment the company in a general meeting may do so. (*Barrow v. Potter* (914) 1 Ch. 895). Therefore, in ordinary circumstances the general meeting cannot exercise the power to appoint additional director.

- (c) As the Secretary of the company the following checks would be made after M is appointed as an additional director:
- (i) Whether the appointment was made by the Board?
 - (ii) Whether the maximum strength fixed for the Board was not exceeded by the appointment?
 - (iii) Whether the additional directors held office only up to the date of the next Annual General Meeting?

6. (a) Although Section 292 of the Companies Act, 1956, empowers the Board of Directors of a company to delegate to the Managing Directors the power to invest, in general terms, the funds of the company, nevertheless because of the overriding provisions of Section 372(5), the transaction in the instant case would be invalid. Section 372(5) provides that no investment in shares of a company can be made by the Board of Directors of an investing company in pursuance of sub-section (2), unless it is sanctioned by a resolution passed at a meeting of the Board with the consent of all the Directors present at the meeting except those not entitled to vote thereat, and unless further notice of the resolution to be moved at the meeting has been given to every Director in the manner specified in Section 286. Since Section 372 does not provide for delegation of the power, the proposed delegation to be Managing Director in question, notwithstanding the general provision of Section 292, cannot be made.

(b) In terms of Section 292 the Board of Directors may also delegate to the Managing Director the power to borrow money otherwise than on debentures which it can exercise only by means of resolutions passed at Board Meetings. As per Explanation to Section 292(1), it is the arrangement for an overdraft or cash credit that constitutes the exercise of the borrowing power and not the actual utilisation of the arrangement. In other words, an arrangement for an overdraft or cash credit to the tune of say Rs.5 lakhs constitutes the exercise of the borrowing power and not the actual drawing of this amount on the basis of the overdraft or cash credit. Consequently, the transaction in the instant case shall be valid. But before implementation of the proposal, the Board must pass a resolution at its meeting authorising the Managing Directors to borrow from banks money required for the purpose of the company's business. Also the resolution delegating this power shall specify the total amount outstanding at any one time up to which the delegate may borrow money.

If, however, the moneys to be borrowed together with the money already borrowed by the company (apart from temporary loans obtained from the Company's bankers in the ordinary course of business) will exceed the aggregate of the paid up capital

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of the company and its free reserves, [that is to say, reserves not set apart for any specific purpose] the Board of Directors of the company in question must obtain the consent of the company in its General Meeting. Consequently, care should be taken to ensure that while delegating the power to the Managing Director the aforesaid provision has not been violated, also it should be ensured that the Memorandum of Association permits borrowing.

- (c) Since according to Section 295(1), without obtaining prior approval of the Central Government in that behalf, a company cannot directly or indirectly lend money to persons including firms, in which Directors or their relatives are partners, the company in question must in the first instance seek the Central Government's approval. Secondly, since the power to make loans may be delegated under Section 292(1)(e), the Board of Directors of the company in question must pass a resolution therefore and every resolution delegating this power to the Managing Director shall specify the total amount up to which loans maybe made by the delegate, the purpose for which loans may be made and the maximum amount of loans which may be made for each such purpose in individual cases. Thirdly, by virtue of Section 291(1), the Board must see with reference to the memorandum and articles whether the company is authorised to exercise the power.
- (d) Under Section 293(1)(e), the Board of Directors of a public company can contribute or donate to charitable and other funds not directly related to the business of the company or the welfare of its employees any amount the aggregate of which will not, in any financial year exceed Rs.50,000 or 5% of its average net profits during the three financial years preceding whichever is greater. If this power of the company is not ultra virus the memorandum of the company, then only the Board can act in pursuance of the above-mentioned resolution of the company and in so acting, it can authorise the Managing Director to exercise the power on behalf of the Board.

It may be noted that the power of the Board to donate to general charities is not conditional to the existence of any profits. In such case, they may contribute up to the limit given in Section 293(1)(e).

- 7. (i) Section 166 of the Companies Act, 1956 provides that every company is required to call at least one meeting of its shareholders each year. This meeting is known as the Annual General Meeting. The first meeting of a company must be held within 18 months from the date of its incorporation, and then no meeting will be necessary for the year of incorporation and the following year. Therefore one annual general meeting must be held every year but the gap between such two meetings should not be more than 15 months.

In this case, the meeting of March, 2009 was the adjourned meeting of 2008. No general meeting was held in 2009. There should be one meeting per year and as many as there are years. Thus the contention of the company is untenable and as such it may be convicted for the default. (*Meenakshi Mills Co. Ltd. vs. Asstt. Registrar AIR 1938 Mad. 640*)

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- (ii) Notice of every Board meeting has to be served in writing on each director for the time being in India, and at his usual address in India to every other director. Every officer of the company whose duty is to serve the notice as aforesaid and who fails to do so shall be punishable with fine extending to Rs. 1000 (Section 286). It is usually the secretary of the company on whom it casts the duty to serve the notice as aforesaid. It should be noted that the company is not liable for the default in the service of the said notice; it is only the officer in default who is subject to the said penalty. Although there is no legal precedence in this regard, it would be a prudent practice on strictly construing Section 286 that the notice should be served to the alternate director as well as on the original director who is outside India for the time being.
8. (i) Sections 171 of the Companies Act, 1956 provides that a general meeting of the company may be called by giving not less than 21 clear days' notice in writing. The term 'general meeting' includes all kinds of general meetings - annual, statutory or extra - ordinary.

The effect of the section is that if notice of a general meeting is sent by post, it must be posted at such time as to give 21 clear days notice required plus 48 hours in addition. In the instant case, notice of the meeting was posted on October 16th, for the meeting to be held in 7th November. Therefore, notice of the meeting must have been sent atleast 25 days before the date of the meeting since the gap is less than 25 days (i.e. 23 days only). Hence the notice is invalid.

(ii) (a) **Proceedings of Annual General Meeting not held in time**

Failure to hold annual general meeting within the time prescribed under section 166 of the Companies Act, 1956 is an offence punishable under section 168. Thus, if a meeting is held beyond due date, it only involved penalty and it is not void meeting. All the resolutions passed in such a meeting are valid.

(b) **Appointment of a proxy by a person representing a member company.**

According to Section 187 (2) of the Companies Act, 1956 a person authorized by board resolution of a member company shall be entitled to exercise the same rights and powers (including the rights to vote by proxy) on behalf of the body corporate which he represents as that body could exercise if it were an individual member. The representative may, instead of being present in person, appoint a proxy.

(c) **Fresh proxies for adjourned general meeting**

A proxy properly lodged before a general meeting will be valid for an adjourned meeting also. It is also possible to lodge fresh proxies 48 hours before the adjourned meeting is held. Regulation 61 of Table A specifically permits deposit of proxies 48 hours before the time for holding the adjourned meeting. Companies may adopt Table A or its articles may contain provisions similar to

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Regulation 61. Hence fresh proxies deposited in time for the adjourned meeting are valid.

(d) Casting vote in respect of a special resolution

Regulation 54 of Table A provides for casting vote by the chairman of a general meeting in case of equality of votes. Companies usually provide for similar provision on the articles. However in absence of specific provision, chairman does not have a casting vote. Further, Chairman can use his casting vote only when there is equality of votes. Thus, the vote can be used only for ordinary resolution and not where a special resolution is required.

9. (i) Inspection of books of account – By Whom? : According to Section 209A of the Companies Act, 1956 the following persons can inspect the books of account of a company.

- (i) Directors of the company
- (ii) Registrar of Companies
- (iii) Such officer of Government as may be authorized by the Central Government in this behalf.
- (iv) An officer of Securities and Exchange Board of India has also power to carry out in respect of matters covered under section 55A of the Companies Act, 1956, dealing with listed companies.

Mr. Ramesh cannot exercise the power to carry out the inspection even though he and his group hold more than 50% of the equity share capital of the company. It is, however, possible for Ramesh and his group to come into the management by occupying the posts of directors by virtue of shareholdings and then inspect the books of account of the company.

- (ii) The powers of the Registrar of Companies in respect of seizure of books and records of any company are governed by section 234A of the Companies Act, 1956. Sub-section (1) of the said section provides that if, pursuant to the information in his possession, the Registrar has reasonable ground to believe that books and papers of a company may be destroyed, mutilated, altered, falsified or secreted, the Registrar may make an application to the Magistrate of First Class or the Presidency Magistrate, as the case may be, having jurisdiction for an order for the seizure of such books and papers.

According to Section 234A(2), the Magistrate, after considering the application and hearing the Registrar, may authorize the Registrar to do the following:

- (i) To enter the place or places where such books and papers are kept.
- (ii) To search the place or places in the manner as provides in the Magistrate's order.
- (iii) To seize the books and papers as he considers necessary.

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Section 234A(3) authorises the Registrar to keep the seized books and papers for a period of thirty days, after which the same have to be returned to the person from whom the seizure was made. But the Registrar is empowered, before returning the said books and papers, to take copies of or extracts from them or place identification marks on them or deal with them in the manner he considers necessary.

Section 234A(4) states that the Registrar, while conducting search and seizure, has to follow the provisions relating to search and seizure as prescribed in the Code of Criminal Procedure, 1898.

In view of the above provisions of section 234A of the Companies Act, 1956, the Registrar of Companies is empowered to seize the books and papers of the company against whom the complaint has been made by following the procedure laid down in the section.

10. (i) An order under section 394 of the Companies Act, 1956, transferring the property, rights and Liabilities of one company to another does not automatically transfer contracts of personal service, which are in their nature, incapable of being transferred and no contract of service is thereby created between an employee of the transferor company on the one hand and the transferee company on the other. *In Nokes v. Doucaster Amalgamated Collieries Ltd [(1940) 3 All & K 540]*, the House of Lords categorically stated that the workers are not furniture and their services cannot be transferred without their consent. Therefore, the workers of ABC Ltd will succeed against XYZ Ltd.
- (ii) **Amalgamation:** A scheme of compromise or arrangement may provide for amalgamation of companies under section 394 of the Companies Act, 1956. Section 394(4)(b) defines the 'transferor' and 'transferee' companies. While the 'transferee' company does not include any company other than a company within the meaning of the Companies Act, 1956, the transferor company includes any body corporate, whether a company within the meaning of the Companies Act, 1956 or not. 'Body Corporate' includes a company incorporated outside India [(section 2(7))]. Hence transferor company may be a company incorporated outside India, but transferee company must be a company incorporated under the Companies Act, 1956.

Usually the Memorandum of Association of a company contains in its object clause the power to amalgamate. But, in a number of cases it has been held that it is not necessary to have in the memorandum of association a specific power to amalgamate with another company. The provisions of Section 391/394 of the Companies Act, 1956 indicate the scope of the statutory power for amalgamating a company with another company despite the absence of any specific enabling provision in their memoranda. (*Aimco Pesticides Ltd, Feedback Reach Consultancy Pvt Ltd., Sir Matturdas Vissaiji Foundation in re*). Hence even companies not having specific power to amalgamate in their Memorandum can seek sanction of the Court for a scheme of amalgamation.

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11. Section 399 of the Companies Act, 1956, provides the right to apply to the Company Law Board for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:

- (i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.
- (ii) In the case of company not having share capital not less than one-fifth of the total number of its members.

Since the group of shareholder do not number 100 or hold 1/10th of the issued share capital or constitute 1/10th of the total number of members, they have no right to approach the CLB for relief. However, the Central Government, if it is of the view that circumstances exist which make it just and equitable so to do, may authorise any member (s) to apply to the CLB (Section 399(4)). So, members may approach Central Government to authorise them to approach CLB in spite of deficiency in numbers.

- (iii) As regards obtaining relief from CLB, continuous losses cannot, by itself, be regarded as oppression. (*Ashok Betelnut Co. P. Ltd. vs. M K Chandrakanth*). Similarly, failure to declare dividends or payments of low dividends also does not amount to oppression. (*Thomas Vekkon V.J. (v) Kuttanad Rubber Co. Ltd.*).

Thus the shareholders may not succeed in getting any relief from CLB.

12. For a petition under section 398 of the Companies Act, 1956 the complainant members are required to establish that the company's affairs are being conducted in a manner prejudicial of the public interest or in a manner prejudicial to the interest of the company.

Thus in the present case, the Company Law Board may entertain the application if complainant member is able to prima facie establish that the directors have misused their position in making certain inter-corporate deposits which are against the interest of the company.

13. (i) The official liquidator can invoke the provisions contained in Section 531 of the Companies Act, 1956 to recover the sale of assets of the company. According to Section 581, any transfer of property, movable or immovable made within 6 months before the commencement of winding up will be deemed to be a fraudulent preference and hence invalid in the eyes of laws. Since in the present case, the sale of immovable property took place on 10th May, 2007 and the company went into liquidation on 15th October, 2007 i.e., within 6 months before the winding up of the company and since the sale has resulted in a loss of Rs. 50 lakhs to the company. The official liquidator will be able to succeed in proving the case under Section 531 by way of fraudulent preference as the property was sold to a private company in which the son of the ex-managing director was interested.

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According to Section 534 of the Companies Act, any floating charge created within 12 months of the commencement of the winding up will be treated as invalid unless it is proved that the company immediately after the creation of charge was solvent. In the present case it may be difficult for the Bank, the charge holder to prove that the company was solvent after the creation of the floating charge. The charge holder i.e., the Bank is however, entitled to recover from the company. The amount advanced along with 5% interest. Further preferential debts under Section 530 will have priority over debts secured by a floating charge. The official liquidator may thus prove that the floating charge created by the company is invalid.

- (ii) Section 530 of the Companies Act, 1956 lays down the procedure for payment of debts out of available funds with the Official Liquidator. However, Section 529A provides for overriding of the preferential payments as mentioned in Section 530. According to Section 529A, notwithstanding anything contained in other provisions of this Act or any other law for the time being in force, in the winding up of a company ,

(a) workmen's dues; and

(b) debts due to secured creditors, shall be paid in priority to all other debts.

The above debts have to be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

In this light of the legal provisions explained, the funds available with the Official Liquidator are not even sufficient to meet fully the dues payable to secured creditors and workers. Thus, tax dues to the tune of Rs.4,00,000 payable to Government authorities will not get any payment even though they are to be considered as preferential payments as per section 530 of the Act. The secured creditors dues and workmen dues will get abated equally and they get Rs. 32 lakhs and Rs.24 lakhs respectively. The other creditors will get nothing.

- 14 (i)** As per Section 581J of the Companies Act, 1956, any Inter-State Co-operative Society with objects not confined to one State may make an application to the Registrar of Companies for registration as Producer Company.

The application for registration as a producer Company is to be submitted along with the following:

(a) a copy of the special resolution, of not less than two-third of total members of Inter-State Co-operative Society, for its incorporation as a Producer Company under the Companies Act

(b) a statement showing:

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- (i) Names and addresses or the occupation of the directors and Chief Executive, if any, by whatever name called, of such inter-State Co-operative Society, and
 - (ii) list of members of such Inter-State Co-operative Society;
 - (c) a statement indicating that the Inter-State Co-operative Society is engaged in any one or more of the objects specified in Section 581B of the Companies Act, 1956;
 - (d) a declaration by two or more directors of the Inter-state co-operative society certifying that particulars given in the above statements are correct.
- (ii) As per Section 581F of the Companies Act, 1956, the Memorandum of Association of a Producer Company has to state the following:
- (a) the name of the company with “Producer Company Limited” as the last words of the name of such Company;
 - (b) the State in which the registered office of the Producer Company is to situate;
 - (c) the main objects of the Producer Company confirming to the objects specified in Section 581B of the Companies Act, 1956;
 - (d) the names and addresses of the persons who have subscribed to the memorandum of Association;
 - (e) the amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount;
 - (f) the names, addresses and occupations of the subscribers being producers, who shall act as the first directors in accordance with section 581J(2) of the Companies Act, 1956;
 - (g) that the liability of its members is limited;
 - (h) opposite to the subscriber’s name the number of shares each subscriber takes (Each subscriber must take at least one share);
 - (i) in case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.
- 15. Director Identification Number:** It is an unique Identification Number allotted to an individual who is an existing director of a company or intends to be appointed as director of a company pursuant to section 266A & 266B of the Companies Act, 1956.
- A provisional DIN is approved only after scrutiny of the documents attached with the application. Some of the common mistakes committed by applicants and on account of which the DIN application gets rejected are as under:- Non payment of DIN application fee.
- The DIN application fee is not paid
- Non-submission of supporting documents
- The proof of identity of the applicant is not submitted.

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- The proof of father's name of the applicant is not submitted.
- The proof of date of birth of the applicant is not submitted.
- The proof of residential address of the applicant is not submitted.
- The Affidavit (for applicant or his/her father's name being a single name) is not submitted.
- The copy of passport (for foreign nationals) is not submitted

Invalid Application/supporting Documents

- The supporting documents are invalid or expired.
- The proof of identity submitted has not been issued by a Government Agency.
- The application/enclosed evidence has handwritten entries.
- The submitted application is a duplicate DIN application and already one application of that applicant is pending or approved.
- The submitted application does not have photograph affixed.
- The signatures are not appended to the prescribed place.
- The applicant's name filled in application form does not match with the name in the enclosed evidence.
- The applicant's father's name filled in application form does not match with the father's name in the enclosed evidence.
- The applicant's date (DD/MM/YY) of birth filled in application form does not match with the date of birth in the enclosed evidence.
- The address details filled in the application do not match with those contained in the enclosed supporting evidence.
- The prefixes/ suffixes like Mr. / Ms. / Kumari / Shri / Late/Ji etc. are used in the applicant's name or applicant's father's name field in Form DIN-1.
- The gender is not entered correctly in Form DIN-1.
- Identification number entered in application does not match with the identity proof enclosed.
- The application does not contain the valid Service Request Number (SRN) through which the DIN application fee is paid.

Improper Attestation of documents

- The attesting authority has not put his signature.
- The documents have not been attested by authorized person.
- Applicant's photograph has not been attested by an authorized person.
- The proof of identity has not been attested by an authorized person.

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- The proof of father's name has not been attested by an authorized person.
 - The proof of date of birth of the applicant has not been attested by an authorized person.
 - The proof of residential address has not been attested by an authorized person.
 - The particulars of the attesting authority are incomplete (e.g. professional's name, designation, membership number, stamp/seal).
16. (i) According to section 591 of the Companies Act, 1956, a company incorporated outside India and having a place of business in India is treated as a "Foreign Company". As per clause (c) of section 602 of the said Act, the expression 'place of business' includes a Share Transfer office. Thus, according to the provisions of the Companies Act, 1956, the status of XYZ Ltd. incorporated in London, U.K., which has a Share Transfer office in Mumbai, shall be that of a 'Foreign Company'.
- (ii) According to section 597 of the Companies Act, 1956, any document which a foreign company is required to deliver to the Registrar of Companies shall be delivered to the Registrar having jurisdiction over New Delhi and also to the Registrar of the State in which the principal place of business of the foreign company is situate.
- In light of the above provisions of the Companies Act, 1956, ABC Ltd. is required to deliver the requisite documents to the Registrar of Companies having jurisdiction over New Delhi and also to the Registrar of Companies, West Bengal.
- (iii) Section 598 of the Companies Act, 1956 prescribes the penalty for non-compliance of the provisions of section 597 of the said Act. According to the provisions of the said section 598, the foreign company and its every officer or agent, who is in default, shall be punishable with a fine upto Rs.10,000/- and in case of continuing offence, additional fine upto Rs.1,000/- per day for the period during which the default continues.
17. (i) While drafting the minutes of a board meeting following salient points should be kept in mind:
- (a) the minutes may be drafted in a tabular form or they may be drafted in the form of a series of paragraphs, numbered consecutively and with relevant headings.
 - (b) the place, date and time of the meeting should be stated.
 - (c) the minutes should contain the constitution of the meeting, i.e., persons present and the capacity in which present, e.g. name of the person chairing the meeting, names of the directors and secretary, identifying them as director or secretary, names of persons in attendance like auditor, internal auditor etc. The minutes should also contain the subject of leave of absence granted, if any, to any of the board members.

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- (d) content of the meeting giving serial number of the minute, brief subject heading, full terms of the resolution adopted including the statistical details, if any.
- (e) names of the directors dissenting or not concurring with any resolution passed at the board meeting.
- (f) reference about interested directors abstaining from voting is also required to be stated in the minutes.
- (g) Chairman's signature and date of verification of minutes as correct.

- (ii) Resolution passed at the meeting of board of directors of DBM Limited held at its registered office situated at on 2nd May, 2010 at AM.

"RESOLVED that subject to the approval by the shareholders in a general meeting and pursuant to provisions of Sections 198, 309, 310, Schedule XIII and other applicable provisions of the Companies Act, 1956, Mr. Paul be and is hereby appointed as the Managing Director of the Company with effect from 1st June, 2010 for a period of five years on a remuneration approved by the Remuneration Committee as enumerated below:

- (1) Salary: Rs. per month
- (2) Perquisites, Benefits and Facilities

"RESOLVED FURTHER that Mr. Paul, so long as the functions as the Managing Director of the Company shall not be entitled to any sitting fee for attending any meeting of the board of directors or any committee thereof and that he shall not be liable to retire by rotation."

"RESOLVED FURTHER that Mr. Paul till he holds the office of Managing Director of the Company shall not become interested or concerned in any selling agency directly or through his wife or minor children in future without prior approval of the Central Government."

"RESOLVED FURTHER that Mr. Paul, the Chairman, as well as the Company shall have right to terminate the appointment by giving 3 (three) months' notice in writing."

"RESOLVED FURTHER that the Secretary of the company be and is hereby directed and authorized to file necessary returns with the Registrar of Companies and to do all other necessary things required under the provisions of the Companies Act, 1956."

- 18.** No issuer shall make a public issue or rights issue of specified securities:

- (a) if the issuer, any of its promoters, promoter group or directors or persons in control of the issuer are debarred from accessing the capital market by the Board;
- (b) if any of the promoters, directors or persons in control of the issuer was or also is a promoter, director or person in control of any other company which is debarred

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from accessing the capital market under any order or directions made by the Board;

- (c) if the issuer of convertible debt instruments is in the list of wilful defaulters published by the Reserve Bank of India or it is in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months;
- (d) unless it has made an application to one or more recognised stock exchanges for listing of specified securities on such stock exchanges and has chosen one of them as the designated stock exchange:

Provided that in case of an initial public offer, the issuer shall make an application for

listing of the specified securities in at least one recognised stock exchange having nationwide trading terminals;

- (e) unless it has entered into an agreement with a depository for dematerialisation of specified securities already issued or proposed to be issued;
 - (f) unless all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited;
 - (g) unless firm arrangements of finance through verifiable means towards seventy five per cent. of the stated means of finance, excluding the amount to be raised through the proposed public issue or rights issue or through existing identifiable internal accruals, have been made.
- 19.** Regulation 26 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 prescribes the conditions to be fulfilled for issue of shares. As per the said Regulation, an issuer may make an initial public offer, if:
- (a) it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent. are held in monetary assets. Further that if more than fifty per cent of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project.
 - (b) it has a track record of distributable profits in terms of section 205 of the Companies Act, 1956, for at least three out of the immediately preceding five years. The extraordinary items shall not be considered for calculating distributable profits.
 - (c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each).
 - (d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year.
 - (e) if it has changed its name within the last one year, at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

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In the given case,

- (a) The net tangible assets of the company as per the last three audited balance sheets as on 31st March, 2007, 2008 and 2009 were Rs. 4.00 crores, Rs. 4.50 crores, and Rs. 5.00 crores respectively. It satisfies the requirements of clause (a) as above as during each of the preceding three full years, it has net tangible assets, more than Rs.3 crores and out of which the monetary assets are not more than 50 % of the net tangible assets. (In this case it has monetary assets less than Rs 50 lacs).
- (b) The company has good track record of distributable profits in terms of section 205 of the Companies Act, 1956. In other words, it has not incurred any loss in any year in the past.
- (c) The net worth of the company during the three preceding years was at least Rs. 1 crore in the preceding three full years. (paid-up capital since 1st April, 2001 is Rs 3 crores and net worth as at 31st March, 2007 was Rs. 5.00 crores.
- (d) The aggregate of the proposed issue and all previous issues made in the same financial years does not exceed 5 times its pre-issue net worth. (Rs. 20 crores is the proposed issue and pre-issue net worth is Rs. 5 crores as on 31st March, 2009.
- (e) It is stated in the problem that the revenue earned by the company under its activity (chemical) the new name is more than from the old activity (engineering, it satisfied the condition (e) as stated above.

Hence Chirag Chemicals & Engineering Ltd can proceed to make a public issue of shares to raise Rs. 20.00 crores by issuing equity shares at premium.

20. (i) According to the provisions of section 11 of the Securities Contracts (Regulation) Act, 1956, where the Central Government is of opinion that the governing body of any recognized stock exchange should be superseded, then notwithstanding any thing contained in any other law for the time being in force, the Central Government may serve on the governing body a written notice that the Central Government is considering the supersession of the governing body for the reasons specified in the notice. After giving an opportunity to the governing body of such Stock Exchange to be heard in the matter, the Central Government may, by notification in the Official Gazette, declare the governing body of such Stock Exchange to be superseded.

The Central Government may appoint any person or persons to exercise and perform all the powers and duties of the governing body. If more than one person is so appointed, one of them may be the Chairman and another as the Vice-Chairman. Such person or persons shall hold office for such period as may be specified in the Notification and the Central Government may vary such period by way of another Notification.

On the publication of the notification in the Official Gazette, following are the consequences:

- (a) The members of the governing body of such Stock Exchange ceases to hold office as such members on and from the date of notification.

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- (b) The person or persons appointed by the Central Government may exercise and perform all the powers and duties of the governing body which has been so superseded.
- (c) The property of the Stock Exchange as deemed necessary and so specified in writing by such person or persons to carry on the business of the Stock Exchange shall vest in such person or persons.
- (ii) Transfer of certain duties and functions of a clearing house by a stock exchange to clearing corporation under the Securities Contracts (Regulation) Act, 1956 (Section 8A)

Purposes:

A recognized stock exchange may, with the prior approval of the Securities and Exchange Board of India, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956 for the purpose of:

- (i) the periodical settlement of contracts and differences thereunder,
- (ii) the delivery of, and payments for, securities;
- (iii) any other matter incidental to, or connected with, such transfer.

Procedure:

1. Every clearing corporation shall for the purpose of transfer of the duties and functions of a clearing house to clearing corporation make bye-laws and submit the same to the SEBI for approval.
2. The SEBI may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws submitted to it under sub-section (2) and approve transfer of the duties and functions of a clearing house to a clearing corporation.
3. The provisions of Sections 4 to 12 shall, as far as may be, apply to a clearing corporation as they apply in relation to a recognized stock exchange.

21. (i) Capital Accounts Transactions

Section 2 (e) of FEMA 1999, states that capital accounts transactions means :

- (1) a transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident outside India.
- (2) a transaction which alters the assets or liabilities in India of persons resident outside India.

It also includes the following transactions referred in Section 6(3).

- (a) transfer or issue of any foreign security by a person resident in India.
- (b) transfer or issue of any security by a person resident outside India.

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- (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India.
- (d) any borrowing or lending on foreign exchange in whatever form or by whatever name called.
- (e) any borrowing or lending on rupees on whatever form or by whatever name called between a person resident in India and a person resident outside India.
- (f) deposits between persons resident in India and persons resident outside India.
- (g) exports, import or holding of currency or currency notes.
- (h) transfer of immovable property outside India, other than a lease not exceeding 5 years, by a person resident outside India.
- (i) acquisition in transfer of immovable property in India, other than a lease not exceeding outside India.
- (j) giving of guarantee or surety in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India or by a person resident outside India.

All capital accounts transactions are prohibited, unless specifically permitted. Proviso to Section 6(2) of Act specifically permits withdrawal of foreign exchange for payments due on account of amortization of loans. Hence there is no restrictions in this regard.

RBI is empowered to specify in consultation with the Central Government the classes of capital account transactions which are permissible and the limits upto which foreign exchange shall be admissible for such transactions. Accordingly Foreign Exchange Management (Permissible Capital Account Transactions) Regulations 2000 completely prohibits certain capital account transactions. One such transaction is foreign investment in India in any company, firm or proprietary concerns engaged in proposed to engage in agriculture or plantation activities.

- (ii) X had resided in India during the financial year 2009-2010 He went to USA for higher studies on 1.8.2010 In other words, he has not gone out of or stayed outside India for or on taking up employment, or for carrying on a business or any other purpose in the circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, X would be a 'person resident in India' during the financial year 2010-2011.
- 22. (i)** As per provisions of Section 36(4) of the Competition Act, 2002 the Competition Commission may call upon such experts from the fields of economics, commerce, accountancy, international trade or other disciplines as it deems necessary, to assist the Commission in the conduct of any enquiry or proceeding before it. As per Regulation 54 of the Competition Commission (General) Regulations, 2004 made by the Commission under Section 64 of the Competition Act, 2002, it may draw up a panel of such experts.

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In view of the above stated specific powers given to the Competition Commission, it can call upon the services of an expert from the pharmaceutical sector to determine the truth of the allegations leveled by the plaintiff against the respondent. Hence, the contention of the respondent is not tenable.

- (ii) Provisions of Section 11(2) of the Competition Act, 2002 empower the Central Government to remove, by an order, a member of the Competition Commission of India from his office if such member has acquired such financial interest as is likely to affect prejudicially his functions as a Member of the Competition Commission. However, provisions of Section 11(3) of the said Act put some restrictions on such powers of the Central Government. According to this section, in case as stated in the question, the Central Government wants to remove a member of the Competition Commission from his office, it has to make a reference to the Supreme Court. The Supreme Court shall hold an enquiry in accordance with the procedure formulated by it and then report that the member in question ought to be removed from his office.

Thus, the Central Government can remove a member of Competition Commission from his office by following the above procedure.

- 23. (i) Normally a proviso is added to a section to except something stated in the enactment, which should be within the purview of the enactment. Ordinarily a provision should not be interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a proviso and to no other (*Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax A.I.R 1955 S.C. 765*)

Sometimes an explanation is added to a section for the purposes of explaining the main provisions contained in the section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise with and clear up any ambiguity in the main section. Something may be added to or something may be excluded from the main provision by such insertion. But the explanation should not be construed to widen the ambit of the section.

For example, Section 294AA of the Companies Act, 1956 gives power to the Central Government to prohibit the appointment of sole selling agents of a company in certain cases. An explanation has been added to this section which states that "appointment" include 'reappointment'. It only clarifies the main provisions of the statute, it does not widen the ambit of the power of the Central Government.

- (ii) When particular words pertaining to a class or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. This rule which is known as Rule of ejusdem generis reflects an attempt 'to reconcile incompatibility between the specie and general words in view of the other rules of interpretation that all words in the statute are given effect if possible, that a statute is to be construed as a whole and that no words are presumed to be superfluous. For instance, where an Act permits keeping of dogs, cats, cows, buffaloes and other animals the expression 'Other animals' would not include animals like lions and tigers, but would mean, only domesticated animals like horses etc.

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The rule applied when (i) the statute contains an enumeration of specific words: (ii) the subjects of enumeration constitute a class or category: (iii) that class or category is not exhausted by the enumeration; (iv) the general terms follow the enumeration; and (v) there is no indication of a different legislative intent. If the subjects of enumeration belong to a broad based genus as also to narrower genus, there is no principle that the general words should be confined to the narrower genus.

The rule is applied extensively in interpreting the various statutes. The rule of ejusdem generis has to be applied with care and caution. It is not an inviolable rule of law, but only permissible reference in the absence of an indication, to the contrary, and where the context and the object and mischief of the enactment do not require restricted meaning to be attached to word of general import, it becomes the duty of the courts to give/words their plain and ordinary meaning. The rule of ejusdem generis has no inverse application. General words preceding the enumeration of specific instances are not governed by this rule and their import cannot be limited by such words.

24. (i) Every Banking Company incorporated in India must create a Reserve Fund and transfer a sum equal to not less than 20 % of its net profits (Section 17). However, Central Government is empowered to exempt from this requirement on the recommendation of the RBI. Such exemption will be allowed only:-

- when the amounts in the reserve fund and the share premium account are equal to the paid-up capital of the banking company
- when the Central Govt. feel that its paid-up capital and reserves are adequate to safe guard the interest of the depositors

If a banking company appropriates any sum from the Reserve fund or the share premium account, it must be reported to RBI within 21 days explaining the circumstances leading to such appropriation

- (ii) Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank, or financial institution, or securitisation company or reconstruction company or qualified institutional buyer, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.
25. **Money-Laundering:** Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering.

Punishment for the offence of Money Laundering: Section 3 deals with the offence of money laundering which has been discussed in the definition part above. Section 4 provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees. But where the proceeds of crime involved in

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money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to ten years instead of seven years.

Applicability of relevant Amendments/Circulars/Notifications/Regulations etc. relating to Corporate Laws for May 2011, Examination:

S.No.	Subject Matter	CA Final – Corporate and Allied Laws	Website for reference
1.	Companies Bill, 2009	Not applicable	www.mca.gov.in
2.	Easy Exit Scheme, 2011	Not Applicable	www.mca.gov.in
3.	Provisions relating to Revival and Rehabilitation of Sick-Industrial Companies	Not applicable	www.mca.gov.in
4.	Companies (Second Amendment) Act, 2002 [relating to Winding Up]	Not applicable [Students have been advised to study only the general provisions of winding up as covered under Paragraph 9.4 of chapter 9 of the study material]	www.mca.gov.in
5.	SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009	Applicable (Amendments upto April 2010)	www.sebi.gov.in