

PAPER – 4: CORPORATE AND ALLIED LAWS

PART – I : RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER, 2013

Applicability of relevant Amendments/Circulars/Notifications/Regulations etc.

SUBJECT	AMENDMENT	CONTENT	LINKS FOR REFERENCE
The Companies Act, 1956	Appointment of Cost Auditor by companies	The Ministry of Corporate Affairs vide General Circular No. 36/2012 dated 6th November, 2012 has provided some changes in the procedure for the appointment of cost auditor under section 233B of the Companies Act, 1956 to be followed by the companies and the cost auditor.	http://www.mca.gov.in/Ministry/pdf/General_Circular_36_2012.pdf
The Companies Act, 1956	Filing of Cost Audit Report and Compliance Report in XBRL mode	The Ministry of Corporate Affairs vide General Circular No. 43/2012 dated 26th December, 2012 has decided that all cost auditors and the companies concerned are allowed to file their Cost Audit Reports and Compliance Reports for the year 2011-12 with the Central Government in the XBRL mode, without any penalty, within 180 days from the close of the company's financial year to which the report relates or by January 31, 2013, whichever is later.	http://www.mca.gov.in/Ministry/pdf/General_Circular_43_2012.pdf
The Companies Act, 1956	Companies (Directors Identification Number) Rules, 2006	The Ministry of Corporate Affairs vide Notification No. G.S.R. 173(E) dated 15th March, 2013 has issued Companies Directors	http://www.mca.gov.in/Ministry/pdf/Gaz_noti_GSR_173-E_dated_15mar2013.pdf

		Identification Number (Amendment) Rules, 2013 by amending the Companies (Directors Identification Number) Rules, 2006.	
The SEBI Act, 1992	SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009	SEBI vide Notification No. LAD-NRO/GN/2012-13/32/4947 dated 27th February, 2013 has issued SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2013 by amending SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009.	http://www.sebi.gov.in/cms/sebi_data/attachdocs/1361965458649.pdf

Non-Applicability of the following Amendments/Circulars/Notifications

S.No.	Subject Matter	CA Final – Corporate and Allied Laws
1.	Companies (Second Amendment) Act, 2002 [relating to Winding up]	Not Applicable [Students are advised to study only General Provisions of winding up as covered under Paragraph 9.4 from the chapter 9 of the study material]
2.	Provisions relating to Revival and Rehabilitation of Sick-Industrial Companies	Not Applicable

PART – II: QUESTIONS AND ANSWERS

QUESTIONS

SECTION – A: COMPANY LAW

Accounts

1. (a) Perfect Services Limited held its Annual General Meeting for the financial year ended 31st March, 2012 on 30th September, 2012. The meeting was adjourned without placing the Balance Sheet of the company as at 31st March, 2012 before the meeting. The balance sheet as at 31st March, 2012 was placed at an adjourned meeting held on 31st March, 2013 and the same was filed with the Registrar of

Companies (ROC) on 20th April, 2013. Examine with reference to the relevant provisions of the Companies Act, 1956 whether placing of the Balance Sheet at an adjourned Annual General Meeting and filing of the same with ROC by the company on 20th April, 2013 are in order.

- (b) Lucknow Fabrics Limited is having a foreign subsidiary company. The said Indian holding company failed to furnish particulars of its foreign subsidiary company in its Balance Sheet. Decide the liability of Lucknow Fabrics Limited under the Companies Act, 1956.

Audit

2. (a) One of the members of Lotus Valley Limited has proposed the name of Mr. Smith for appointment as a director of the company in the Annual General Meeting and given a notice under Section 257. Mr. Smith is also one of the partners of Smith and Smith, Chartered Accountants, who are retiring auditors of the company. But the audit of the company is being looked after by another partner of the firm. Examine whether Smith and Smith can be reappointed as auditors, if Mr. Smith is appointed as director.
- (b) How would you deal with the following situations in the matter of appointment of Auditors?
- (i) The shareholding of L.I.C. and U.T.I. increased from 24 per cent to 28 per cent of the subscribed share capital of the company after issue of notice of the Annual General Meeting, but before the date of the Annual General Meeting.
- (ii) Ordinary resolution is passed at the Annual General Meeting of a company when a special resolution is required to be passed for appointment of Auditor?

Dividend

3. The agenda for the meeting of the Board of Directors of Successful Platform Ltd. held on 20th June, 2012 for adopting the annual accounts for the year ended 31st March, 2012 included an item relating to payment of dividend. At the meeting it became apparent that the profits made during the year ended 31st March, 2012 were inadequate to declare dividend. The Board was keen to maintain the rate of 20% dividend on the equity shares as declared in the previous years so as to maintain the image of the company. The company has some accumulated profits earned in previous years, which were transferred to reserves. Advise the company as to how it should go about to achieve the objective to pay dividend at the rate of 20% on the equity shares.

Directors

4. (a) Ranbaxy Pharma Limited is a company listed with Malhargarh Stock Exchange. Some small shareholders of the said company want to appoint Mr. Adarsh as a

Director as their representative on the Board of Directors of the said company. Mr. Adarsh is holding 1000 equity shares of ₹ 10 each in the said company. State the provisions of the Companies Act, 1956 in relation to the proposal to appoint Mr. Adarsh as a Small Shareholders' Director.

- (b) Decent Hotels Limited has 10 directors on its board. Two of the directors have retired by rotation at an Annual General Meeting. The place of retiring directors is not so filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the Annual General Meeting could not complete its business, it is adjourned to a later date. At this adjourned meeting also the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'.

Referring to the provisions of the Companies Act, 1956, decide:

- (i) Whether in such a situation the retiring directors shall be deemed to have been re-appointed at the adjourned meeting?
 - (ii) What will be your answer in case at the adjourned meeting, the resolutions for re-appointment of these directors were lost?
 - (iii) Whether such directors can continue in case the directors do not call the Annual General Meeting?
5. (a) Mr. Samuel is Director in 14 Public Limited Companies as on 30th July, 2013. He continues to be so till September 24, 2013. The following companies appointed Mr. Samuel as a Director at their respective Annual General Meetings held on dates mentioned against their names.
- (i) Tulip Ltd. (Annual General Meeting held on 29th September, 2013)
 - (ii) Octave Private Ltd. (Annual General Meeting held on 25th September, 2013)
 - (iii) City Traders Association (A company registered under section 25 of the Companies Act, 1956 – Annual General Meeting held on 26th September, 2013)
 - (iv) Accent Ltd. (Annual General Meeting held on 25th September, 2013)

You are required to state with reference to the relevant provisions of the Companies Act, 1956 the option available to Mr. Samuel in respect of accepting or not accepting the appointment of Director of the above companies.

- (b) Mr. Ramesh, who was appointed as additional director at the Board meeting held on 31st December, 2012 continues to be in his office on the ground that the Annual General Meeting for the year 2013 was not held as required under the Act. Whether continuation of Mr. Ramesh in the office is valid? Will your answer be different if Mr. Ramesh was also appointed as Managing Director for a period of 5 years with effect from 1st January, 2013 at the same Board meeting?

6. (a) Following information is available from the audited Balance Sheet as at 31st March, 2013 of Florina Ltd.,:

	₹
Share Capital	
Equity Share Capital (5,00,000 shares of ₹ 10 each fully paid up in cash)	50,00,000
Less: Calls in arrear	<u>50,000</u>
	<u>49,50,000</u>
Preference Share Capital	15,00,000
Share Application Money	10,00,000
Reserves and Surplus	
Securities Premium	15,00,000
Capital Redemption Reserve	12,00,000
Fixed Assets Revaluation Reserve	10,50,000
Sinking Fund Reserve	11,00,000
General Reserve	40,00,000
Profit and Loss Account	22,00,000
Dividend Equalisation Reserve	6,00,000

You are required to find out, explaining the relevant provisions of the Companies Act, 1956, the amount upto which the Board of Directors can invest in securities of other bodies corporate and/or give loans.

- (b) The Articles of Association of Hi-Tech Ltd. mentioned in it that Mr. Ram and Mr. Shyam will act as directors of the company from the date of incorporation. The company was incorporated on 2nd January, 2012. The articles also provided that the directors will have to obtain qualification shares within one month from the date of appointment as director. Mr. Ram purchased the shares of the company on 28th February, 2012 and Mr. Shyam purchased on 28th March, 2012 thus violating the provisions contained in the articles. Having regard to the provisions of the Companies Act, examine the validity of the appointments of Mr. Ram and Mr. Shyam as directors.

Meetings, Powers of the Boards and Related Party Transaction

7. (a) (i) The Articles of Association of a company fixed 3 as the quorum for a meeting of the Board. At a meeting of the Board, all the 5 directors were present. They allotted the shares of the company to 3 of the directors. Is it valid?

- (ii) A meeting of the Board of directors of a company was convened to be held on 30th December, 2012, but the meeting could not be held for want of quorum. The last meeting of the Board of directors was held on 14th August, 2012. Advise
- (iii) By an oversight, a notice of meeting of the board was not sent to one of the directors who was in India. Is the meeting valid?
- (b) The Board of Directors of Infotech Consultants Limited, registered in Kolkata, proposes to hold the next board meeting in the month of May, 2013. They seek, your advice in respect of the following matters with reference to the relevant provisions of the Companies Act, 1956:
 - (i) Can the board meeting be held in Chennai, when all the directors of the company reside at Kolkata?
 - (ii) Whether the board meeting can be called on a public holiday and that too after business hours as the majority of the directors of the company have gone to Chennai on vacation.
 - (iii) Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?
- 8 (a) Premium Paper Ltd. has a paid-up equity share capital of ₹ 1.5 crores divided into 15 lakh equity shares of ₹ 10 each, fully paid. The company decides to buy raw materials from Paper Wood Private Limited to the extent of ₹ 3 Lakhs on credit. M, one of the directors of Premium Paper Limited is also a director of Paper Wood Private Limited, holding 30,000 fully paid equity shares in the latter company. The Paper Wood Private Limited has a total paid-up Equity share capital of ₹ 10,00,000, divided into equity shares of ₹ 10 each. Paper Wood Private Limited are the dealers of the type of materials needed by Premium Paper Limited. State:
 - (i) What procedure must the Premium Paper Ltd. follow to execute the deal?
 - (ii) What duty does the Companies Act, impose upon M, the director of Premium Paper Limited, who is also a director of Paper Wood Private Limited.
 - (iii) To what penal consequences will M as director be subject to, in case of breach of duty on his part?
- (b) Sunshine Ltd. having paid up share capital of ₹ 40 lakhs appointed Bluebird Private Limited as sole selling agent for a period of 5 years with effect from 1st January, 2013 with the approval of the company in general meeting. The directors of Bluebird Pvt. Ltd. were holding 40,000 equity shares of ₹ 10 each fully paid-up in Sunshine Ltd. since 1st December, 2012.

State with reasons whether the appointment is valid. Will your answer be different, if Bluebird Pvt. Ltd. had acquired the aforesaid shares only on 1st December, 2013?

Inspection and Investigation

9. Surya Products Limited, over years, enjoys high reputation and its General Reserve is many times more than the paid up capital of the company. There is apprehension of cornering the shares of the company by some persons likely to result in change in the Board of directors which may be prejudicial to the Public interest.

Advise, as to how can Surya Products Limited block the transfer of shares of the company under the provisions of the Companies Act, 1956.

Compromise, Arrangements and Reconstructions

10. (a) (i) A meeting of members of Bharti Technology Limited was convened under the orders of the Court to consider a scheme of compromise and arrangement. Notice of the meeting was sent in the prescribed manner to all the 700 members holding in the aggregate 20,00,000 shares. The meeting was attended by 400 members holding 13,00,000 shares. 160 members holding 10,00,000 shares voted in favour of the scheme. 150 members holding 2,40,000 shares voted against the scheme. The remaining members abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 1956 whether the scheme is approved by the requisite majority.
- (ii) Does the scheme of compromise or arrangement require approval of preference shareholders?
- (b) The shareholders and creditors of Pathway Limited, in meeting convened for approval of a scheme of reconstruction of the company, passed resolutions. The scheme of reconstruction provided for the following:
- (i) Sale of vacant land and appropriation of proceeds for payment of outstanding wages, tax dues and repayment of loan.
- (ii) Unsecured creditors to forego 40% of their claims against the company and receive debentures for the balance amount.

A few share holders and creditors raised objections against the said arrangements. Advise the directors about the steps to be taken to give effect to the proposed scheme under the Companies Act, 1956.

Prevention of Oppression and Mismanagement

11. What is meant by oppression? State whether the aggrieved party would succeed in obtaining relief from Company Law Board on the ground of oppression in the following cases:
- (i) The majority of the Board of directors override the minority directors and the minority directors apply to Company Law Board complaining oppression by majority directors.

- (ii) A petition by majority shareholders complaining oppression by minority shareholders.
12. Certain Members of LPQ Limited having share capital feel that the affairs of the company are being mismanaged by Directors. Members therefore, decide to move the Company Law Board, complaining the mismanagement of company affairs by Directors of the Company. Examine the provisions of the Companies Act, 1956 and state
- (i) Whether members are entitled to complain the Company Law Board.
 - (ii) Whether the following acts of the Board of Directors amount to mismanagement:
 - (A) Continuation of Directors in their office after expiry of their tenure and infighting continues among them.
 - (B) Non-declaration of dividend when it does not lead to devaluation of shares.

Corporate Winding up and Dissolution

13. (a) Somani Cement Limited is being wound up by the Court. All the assets of the company have been charged to the company's bankers to whom the company owes ₹ 1 crore. The company owes the following amounts to others:
- | | |
|----------------------------------|-------------|
| (i) Dues to workers | ₹ 25,00,000 |
| (ii) Taxes payable to Government | ₹ 5,00,000 |
| (iii) Unsecured creditors | ₹ 10,00,000 |
- You are required to compute with reference to the provisions of the Companies Act, 1956 the amount each kind of creditors is likely to get if the amount realized by the official liquidator from the secured assets and available for distribution among the creditors is only ₹ 80 lakhs.
- (b) The official liquidator of Rajasthan Jute Limited (in liquidation) instituted misfeasance proceedings under section 543 of the Companies Act, 1956 against 'A', a director of the company in liquidation. During the pendency of misfeasance proceedings 'A' died.

What is meant by Misfeasance? Is it possible for the official liquidator to impede the legal representatives of 'A' and continue the proceeding against them?

Producer Company

- 14 Mr. Krishna, an expert in modern agricultural practices is willing to lend his services as a director to Agro Producer Company Limited, registered under the Companies Act, 1956. Advise Mr. Krishna on the following matters:
- (i) total number of directors than can be appointed
 - (ii) Tenure of directors
 - (iii) Time limit within which the appointment should be made

- (iv) Co-option of directors
- (v) Voting powers of co-opted directors.

E-governance/ Offences and Penalties

15. (a) (i) What is Director Identification Number (DIN)?
- (ii) Who can file an application for allotment of DIN and what is the validity of regular DIN?
- (iii) What are the scanned documents required to be attached with DIN 1?
- (b) Explain what is meant by (i) Compoundable Offences and (ii) Non-Compoundable Offences. State the authorities who can compound the said offences. Indicate whether the following offences are compoundable or non-compoundable:
- (i) Failure to hold the annual general meeting of the company.
 - (ii) Failure to file copies of annual accounts with the Registrar of Companies.
 - (iii) Acceptance of deposits in excess of the prescribed limits and
 - (iv) Non-distribution of dividend to the members within the prescribed time.

Miscellaneous provisions

16. Following information is available about holding of equity shares of Dream Construction Ltd. by various authorities:

Date of incorporation	3 rd October, 2012
Date of receipt of certificate of commencement of business	18 th October, 2012

Nominal value of Equity shares held (₹ in Lakhs)	
Uttar Pradesh Government	11,600
Central Government	8,000
Bharat Heavy Electricals Ltd. (A Corporation controlled by Central Government)	8,000
Private Sector Companies	8,800
Indian Mutual Funds	4,000
Foreign Financial Institutions	3,600
Individual Members:	<u>3,600</u>
Total	<u>48,000</u>

On the basis of the information given above, advise Dream Construction Ltd. about the following:

- (i) Whether Dream Construction Ltd. is a Government Company?

- (ii) How the auditors will be appointed in Dream Construction Ltd.

Corporate Secretarial Practice

17. Mr. Keshav has been appointed as Managing Director of BOP Ltd., Chandigarh in the meeting of the Board of Directors held on 1st July, 2013 for a term of five years. You, being the Secretary of the company, is required to draft the minutes of the above meeting of the Board of Directors.

SECTION – B: ALLIED LAWS

The Securities and Exchange Board of India (SEBI) Act, 1992

18. What are the common restrictions for issuers in case of public and rights issues?
19. Basil Ltd., a public limited company listed with the Mumbai Stock Exchange wants to make issue of equity shares on preferential basis pursuant to a scheme approved under Corporate Debt Restructuring framework specified by Reserve Bank of India to various persons as may be selected by the Board of directors of the company. Following information relevant to the preferential issue is available:
- (i) Total No. of equity shares to be issued: 50 Lac equity shares of ₹ 10 each out of which 30 lac equity shares will be allotted on 30th June, 2013 as fully paid up and balance 20 lac equity shares shall be allotted on the same date but paid up to ₹ 5 each and balance ₹ 5 shall be called upon at a later date and shall be paid up on 30th November, 2013.
 - (ii) Out of the proposed allottees some persons are holding their shares in Basil Ltd. in physical form and not in dematerialised form and some persons had sold their entire shareholding in Basil Ltd. in January, 2013.
 - (iii) The meeting of general body of shareholders for approving the preferential issue was held on 15th March, 2013.

Based on the above information you are required to answer the following queries with reference to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009:

- (i) What would be the lock-in period for the shares allotted on preferential basis?
- (ii) Who are the persons not entitled for allotment of shares on preferential basis?

Securities Contracts (Regulation) Act, 1956

20. (a) The Electro Optimum Corporation, New Delhi issued 6 years bonds to public directly and not through any Stock Exchange. Whether the Electro Optimum Corporation can do so? Is it not a violation of Securities Contracts (Regulation) Act, 1956?
- (b) 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.

Foreign Exchange Management Act, 1999

21. (a) Answer the following:

Examine, with reference to the provisions of the Foreign Exchange Management Act, 1999, the residential status of the branches mentioned below:

- (i) Karat Limited, an Indian company having its Registered Office at Mumbai, India established a branch at New York U.S.A. on 1st April, 2013.
 - (ii) Dime Ltd., a company incorporated and registered in London established a branch at Chandigarh in India on 1st April, 2013.
 - (iii) Dime Ltd.'s Singapore branch which is controlled by its Chandigarh branch
- (b) Mr. Shekhawat an Indian National realizes that a penalty may be imposed upon him for violation of the provisions of the Foreign Exchange Management Act, 1999. He therefore desires to compound his offences. Advise Mr. Shekhawat about the process and procedure of compounding of the offence

The Competition Act, 2002

22. (a) Discuss the provisions relating to the meetings of the Competition Commission of India.
- (b) A Government Department is supplying water for irrigation to the Agriculturists after levying charges for water supplied (and not water tax). Whether the Government department can be considered as an 'Enterprise'. Examine with reference to the relevant provisions of the Competition Act, 2002.

Interpretation of Statutes, Deeds and Documents

23. (a) Explain the rule of 'Purposive construction'.
- (b) Explain 'Definitional sections/clauses' as internal aids to interpretation of statutes, deeds and documents.

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. (a) How are rights or interest in financial assets acquired under the SARFAESI Act, 2002?
- (b) Explain the provision relating to audit of banking companies under the Banking Regulation Act, 1949.

Prevention of Money Laundering Act, 2002

25. (a) What offences are triable by Special Courts under section 44 of the Prevention of Money Laundering Act, 2002?

- (b) Explain 'Reciprocal arrangements for assistance and agreements with foreign countries in order to facilitate proper exchange of information' as provided under Prevention of Money Laundering Act, 2002:

SUGGESTED ANSWERS/HINTS

- 1 (a) According to Section 220 of the Companies Act, 1956, after the balance-sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar of Companies (ROC) within thirty days from the date on which the balance-sheet and the profit and loss account were laid or where the annual general meeting of a company for any year has not been held, there shall be filed with the ROC within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.

In the given case, the Perfect Service Limited held its Annual General Meeting for the financial year ended 31st March, 2012 on 30th September, 2012. But the meeting was adjourned without placing the balance sheet of the company. The balance sheet was placed at an adjourned meeting held on 31st March, 2013 and the same was filed with the ROC on 20th April, 2013. Hence, the company has made a default because even if the annual accounts were not placed/adopted in the annual general meeting held on 30th September, 2012, they should have been filed with ROC on or before 30th October, 2012.

It is provided that if the annual general meeting of a company does not adopt the balance sheet, then a statement of that fact and of the reasons therefor shall be annexed to the balance sheet and to copies required to be filed with ROC.

- (b) **Attachment of documents in relation to an overseas subsidiary company:** Section 212 of the Companies Act, 1956, does not make any distinction between a local subsidiary company and an overseas subsidiary company. Under section 4(4), a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary. Under section 4(5), the expression company includes any body corporate and the definition of body corporate in section 2(7) includes a company incorporated outside India. In view of the aforesaid position, the Indian holding company is legally bound to attach to its balance-sheet the documents mentioned under section 212 prepared in accordance with the requirements of the Companies Act. However, there may be some practical difficulty in attaching the documents of foreign subsidiary, in which case the Board of directors of the Indian holding company may apply to the Central Government under section 212(8) either to waive the requirement or to modify the same. Hence, Lucknow Fabrics Limited has violated the provisions of section 212 in not furnishing the particulars of the foreign subsidiary.

- 2 (a) According to 226(3) of the Companies Act, 1956, the following persons shall not be qualified for appointment as auditor of a company—
- (i) a body corporate;
 - (ii) an officer or employee of the company;
 - (iii) a person who is a partner, or who is in the employment, of an officer or employee of the company;
 - (iv) a person who is indebted to the company for an amount exceeding one thousand rupees, or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees;
 - (v) a person holding any security of that company after a period of one year from the date of commencement of the Companies (Amendment) Act, 2000.

If Mr. Smith is appointed as a director, he will be considered as an officer or employee of the company and this will make him disqualified to be appointed or reappointed as auditor of the company. The firm 'Smith and Smith' would also be disqualified and the fact that the audit work is being looked by some other partner of the firm will not make any difference.

Thus, Smith and Smith cannot be reappointed as auditors.

- (b) (i) Section 224A of the Companies Act, 1956 provides that in case of a company in which 25 per cent or more of the subscribed share capital is held whether singly or in any combination by: (i) a public financial institution or a Government Company or Central Government or any State Government; or (ii) Any financial or other institution established by any provincial or State Act in which a State Government holds not less than 51 per cent of the subscribed share capital or (iii) a nationalised bank or an insurance company carrying on general insurance business, the appointment of an auditor shall be made by a special resolution only.
- Section 224A does not specify the date on which 25 percent of the subscribed capital must be held by the specified institution(s). The Ministry of Corporate Affairs has clarified that the material date is the date of the annual general meeting at which the special resolution is required to be passed. Thus, even though, the shareholding of LIC and UTI increased beyond 25% only after issue of notice, section 224A shall be required to be complied with. Fresh notice of the meeting shall become necessary.
- (ii) If the company fails to pass a Special Resolution where it is required to be so passed for appointment of auditor, it shall be deemed that no auditor(s) had been appointed by the company at its annual general meeting and the Central Government will be empowered to make the appointment [Section 224A(2)].

3. Dividends out of past profits/ reserves can be declared as per the Companies (Declaration of Dividend out of Reserves) Rules, 1975. These Rules, *inter alia*, provide that the dividends to be declared out of reserves shall not exceed average of dividends declared during the last 5 years or 10% of its paid up capital whichever is less. Since, in the present case, it is proposed to declare dividend @ 20%, it shall not be possible without previous approval of the Central Government as per section 205A(3).

The company is advised to make an application to the Central Government, seeking approval for payment of dividend at 20%. It is presumed that the paid-up capital of the company consists of only equity share capital.

4 (a) **Manner of election of small shareholders' director:**

- (1) A company may act suo moto to elect a small shareholders' director from amongst small shareholders or upon the notice of small shareholders, who are not less than 1/10th of total small shareholders and have proposed name of person who shall also be a small shareholder of the company.
- (2) Small shareholders intending to propose a person shall leave a notice of their intention with the company at least 14 days before the meeting under the signature of at least 100 small shareholders specifying name, address, shares held and folio number and particulars of share with differential rights as to dividend and voting, if any, of the person whose name is being proposed for the post of director and of other small shareholders proposing such person as a candidate for the post of director or small shareholders.
- (3) A person whose name has been proposed for the post of small shareholders' director shall sign, and file with the company, his consent in writing to act as a director.
- (4) The listed public company shall elect small shareholders nominee subject to sub-rules (1), (2) and (3) above through the postal ballot.
- (5) The unlisted company may appoint such small shareholders' nominee subject to above conditions if majority of small shareholders recommend his candidates for the post of director in their meeting.
- (6) Tenure of such small shareholders' director shall be for a maximum period of 3 years subject to meeting the requirement of provisions of Companies Act except that he need not have to retire by rotation.
- (7) On expiry of his tenure, the same person if so desired by small shareholders may be elected for another period of 3 years.
- (8) Such director shall be treated as director for all other purposes except for appointment as whole time director or managing director.

(b) Retiring director – When to be deemed director?

In accordance with the provision of the Companies Act, 1956, as contained in section 256(3) at the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by re-appointing the retiring director or some other person thereto. If the place of retiring director is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned to same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday. If at the adjourned meeting also, the place of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless at the adjourned meeting or at the previous meeting a resolution for the re-appointment of such directors was put and lost.

Therefore, in the given circumstances answer to the questions as asked shall be:

- (1) In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.
- (2) In the second case, where the resolutions were lost, the retiring directors shall not be deemed to have been re-appointed.
- (3) In the third case, the directors due to retire shall vacate their offices latest on the date on which Annual General Meeting was to be held.

- 5 (a) As per section 277(2) of the Companies Act, 1956, where a person already holding the office of director in 14 companies or less is appointed, after the commencement of the Companies (Amendment) Act, 2000 as a director of other companies, making the total number of his directorships more than 15, he shall choose the directorships which he wishes to continue to hold or to accept, so however, that the total number of directorships, old and new, held by him shall not exceed 15. None of the new appointments of director shall take effect until such choice is made; and all the new appointments shall become void if the choice is not made within 15 days of the day on which the last of them was made.

However, as per section 278, directorships in certain companies shall not be included for the purposes of section 277. These, *inter alia*, include directorship in private company and section 25 company. Accordingly, on 25th September, 2013 appointment in Accent Ltd. alone shall be added to the directorship of Mr. Samuel thus raising his total directorships to 15. Thus, the case shall be covered under section 277(1) and not under section 277(2). As per section 277(1), he should make a choice of 15 companies within 15 days, in the present case, from 29th September, 2013.

- (b) According to Section 260 of the Companies Act, 1956, additional directors shall hold office only up to the date of the next annual general meeting of the company. *In*

Krishna Prasad Pilani vs. Colaba Land Mills Co. 29 Comp. Cas 273, it was observed that 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 office on the ground that the meeting was not held or could not be called within the time prescribed. It means that such director shall hold office up to the last date on which the next Annual General Meeting should have been held and not the actual holding of that meeting if it is beyond the statutory period for holding of such meeting. Thus, Mr. Ramesh cannot continue as Additional Director in the office on the ground that the meeting was not held or could not be held.

A person who is no more a director, cannot continue to be the Managing Director. Hence Mr. Ramesh, would be required to vacate the office of Managing Director also.

6 (a) Inter-corporate loans/Investments

Ceiling of Loans, Guarantees, Investments, etc- Section 372A has prescribed a ceiling with respect to inter-corporate loans and investments. Company shall not, directly or indirectly, -

- (i) make any loan to any other body corporate;
- (ii) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate; and
- (iii) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate;

exceeding 60 percent of the aggregate of its paid-up share capital and free reserves or 100 percent of its free reserves, whichever is more.

Provisions relating to Inter-corporate loans/Investment, etc. may be grouped under the following heads:

- (I) within the prescribed ceiling
- (II) beyond the prescribed ceiling

Within the Prescribed Ceiling

Procedure

1. Pass a resolution at a meeting of the Board of directors with the consent of all the directors present at the meeting. [Agenda must accompany the notice of the meeting].
2. Obtain prior approval of the concerned Public Financial Institution (PFI) where a default has been made in the repayment of the loan or payment of interest to the concerned PFI and the default is subsisting.

Beyond the Prescribed Ceiling

1. Pass a resolution at a meeting of the Board of Directors with the consent of all the directors present at the meeting.
2. Obtain prior approval of the concerned PFI, if any term loan is subsisting and the total amount of loan and investments (including the proposed one) exceeds 60 % of the aggregate of the paid-up capital + free reserves.
3. Obtain prior approval of the shareholders by way of Special Resolution. Special Resolution must be passed through postal ballot [Rule 4 of the Companies (Passing to the Resolution by Postal Ballot) Rules, 2001].

In the given case, the total paid up share capital of the company is equal to ₹ 49,50,000 (Equity) + ₹ 15,00,000 (Preference) = ₹ 64,50,000. The total amount of free reserves works out to ₹ 83,00,000 (comprising of Securities Premium; General Reserves; Balance in Profit and Loss Account; and Dividend Equalisation Reserve). Aggregate of the paid-up share capital and free reserves works out to ₹ 1,47,50,000. 60 % of this amounts to ₹ 88,50,000 which is higher than the 100% of free reserves, namely ₹ 83,00,000. Thus, the Board of Directors can invest in securities of other bodies corporate and/or give loans upto ₹ 88,50,000. If the Board of Directors wants to invest more than ₹ 88,50,000 then they shall be required to follow the procedure stated under 'Beyond the Ceiling'.

- (b) Without prejudice to the restrictions imposed by section 266, it shall be the duty of every director who is required by the articles of the company to hold a specified share qualification and who is not already qualified in that respect, to obtain his qualification within two months after his appointment as director [Section 270(1)]

So it becomes incumbent on the part of every director to hold qualification share within the time specified and if he does not hold the same at the time of his appointment as director he must acquire them within two months after his appointment as director. Any provision made in the articles of the company requiring a person proposed for directorship to hold qualification share either before appointment or within a shorter than two months after his appointment will be void.

Here the provision in the articles of association to hold shares within one month shall be void. Keeping the above provision in consideration of the appointment of Mr. Ram will be valid as he acquired the shares before the expiry of two months. As far the appointment of Mr. Shyam is concerned he has failed to acquire the share within two-months period. As per section 283(1)(a) the office of director shall become vacant if he fails to obtain the shares within the time specified in section 270(1). Therefore, Mr. Shyam shall have to vacate his office. Here, the date of incorporation is taken as the date of appointment.

- 7 (a) (i) The provisions in regard to quorum for a Board meeting are contained in section 287 of the Companies Act, 1956. It is provided therein that the quorum for a Board meeting shall be one-third of the total number of directors of a company (any fraction contained in that one-third shall be rounded off as one) or two directors whichever is higher. It is further provided that where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength, the number of disinterested directors present at the meeting being not less than two shall form the quorum. The company is, however, free to fix a higher quorum for the Board meeting.

Viewed in the context of the above provisions, the company has fixed the quorum for a Board meeting at 3. In this case, out of five directors present at the meeting, the number of interested directors is three. As such, the remaining two directors who are not interested do not constitute a quorum and hence the meeting cannot be validly convened. Therefore, the allotment of shares at the aforesaid meeting is not valid.

The proviso to section 287(2) cannot also be availed of as the interested directors, who are three, are not equal to or more than two-thirds of the total strength of directors. The figure representing two-thirds will be 4 by rounding off fraction, if any. Hence, it can be assumed that the allotment made at the Board meeting will not be valid.

- (ii) As per section 288 of the Companies Act, 1956, if a meeting of the Board could not be held for want of quorum, then unless the Articles provide otherwise, the meeting shall automatically stand adjourned to, the same day in the next week, at the same time and place or if that day is a public holiday till the next succeeding day which is not a public holiday.

Sub-section (2) of section 288 further provides that the provisions of section 285 shall not be deemed to have been contravened merely by reason of the fact that meeting of the Board which has been called in compliance with the terms of that section, could not be held for want of quorum.

- (iii) According to section 286 of the Companies Act, 1956, notice of every meeting of the Board shall be given in writing to every director in India and to his usual address in India. As this is a compulsory requirement, failure to do so will make the meeting and the resolution passed at the meeting null and void.

- (b) (i) There is no difficulty in holding the board meeting at Chennai even if all the directors of the company resides at Kolkata and the registered office is situated at Kolkata provided requirements regarding signing of register of contracts, etc. are complied with.
- (ii) Under provisions of section 166 of the Companies Act, 1956, the annual general meeting shall be held during business hours and on a day that is not a

public holiday. There is no such provision in the Act with regard to board meetings. Therefore, in the absence of any specific restrictive provision, the board meeting can be held even on a public holiday and out of the business hours. The term "public holiday" in this context should be understood.

- (iii) If the articles of association of the company are silent, the notice of board meeting is not required to specify the nature of business to be transacted thereat [*Compagnie de Mayville v. Whitley* (1896) 1 Ch. 788 (CA)]. If, however, the articles provide otherwise, then the notice must specify the nature of business to be transacted. All said and done, a better course seems to be that the notice should specify the purpose of the meeting, if it is an extra-ordinary or special meeting.

- 8 (a) (i) Section 297 of the Companies Act, 1956, prohibits a director and certain other persons including a private company of which the director is a member or director from entering into a contract for sale, purchase, or supply of, *inter alia* (i.e. among other things) materials without the consent of the Board of Directors. Further, in case the company has a paid up capital of ₹ 1 Crore or more, approval of the Central Government shall also be needed. Thus, in the present case, since the capital of the company is ₹ 1 crore, the requisite approvals of the Board of Directors and the Central Government must be obtained.
- (ii) Section 299 of the Act charges a director to disclose his interest. He must have, therefore, disclosed the fact of his being a director of the Paper Wood Private Ltd. It is also his duty not to participate or vote in the Board's meeting in pursuance of section 300 in matter related to Paper Wood Private Limited.
- (iii) Consequences of non-disclosure of participation shall be:
- (1) M shall have to vacate office of the director [Section 283].
 - (2) Shall be punishable with fine which may extend to ₹ 50,000 [section 299(4)].
- (b) Under section 294AA, no company can except with the prior approval of the Central Government, appoint any individual, firm or body corporate, who or which has a substantial interest in the company as sole selling agent of that company. A person holding paid-up capital exceeding ₹ 5 lakhs or 5% of the paid-up capital of the company whichever is less is deemed to have substantial interest in that body corporate [Explanation to Section 294AA].

Thus, Sunshine Ltd. should have obtained prior approval of the Central Government for appointing Bluebird Pvt. Ltd. as sole selling agents as the latter holds 10% of the paid-up capital of the former company. The appointment is accordingly not valid.

The situation shall be different if shares were acquired by Bluebird Pvt. Ltd. on 1st December 2013. According to a clarification issued by the Ministry of Corporate

Affairs, if the provisions of section 294AA(2) are not attracted to the appointment of selling agents at the time of entering into the agreement with them, it will not be obligatory on the company to comply with the said provision for continuance of said appointment for the remaining duration of the current tenure, even if the provisions of section 294AA(2), became applicable after the appointment due to sole selling agents acquiring substantial interest.

However, Bluebird Pvt. Ltd can continue as sole selling agents for period of 5 years i.e. upto 31st December, 2017, if it acquired the shares only on 1st December 2013 i.e. after its appointment on 1st January 2013.

- 9 Restrictions and Prohibition of transfer of shares or debentures:** As per provisions of section 250(4) of the Companies Act, 1956, where the Company Law Board (referred to as CLB hereinafter) has reasonable grounds to believe that a transfer of shares in a company is likely to take place whereby a change in the composition of the Board of directors of a company is likely to take place and the CLB is of the opinion that any such change would be prejudicial to the public interest, the CLB may, by an order, direct that any transfer of shares in the concerned company during such period not exceeding three years, as may be specified in the order, shall be void.

As per section 250 (1) & (2) of the Companies Act, 1956, if the CLB is of the view that there are good reasons to find out the relevant facts about any shares and the CLB is of the opinion that such facts cannot be found out unless the restrictions are imposed, as an interim measure, it may, by an order, direct that transfer of any such shares shall be void and no voting rights shall be exercised in respect of such shares. However, the CLB is empowered to vary or rescind its order any time.

The facts given in the question squarely fall within the provisions of section 250 of the Companies Act, 1956. The management of Surya Products Ltd. may make a complaint to the CLB and convince it that the transfer of shares in favour of the group of unscrupulous persons would change the composition of the Board of directors of the company which shall be prejudicial to the public interest and if the CLB is convinced with the plea of the company, it may pass an order as stated above which would block the transfer of shares as stated in the question.

- 10 (a) (i) Compromise or Arrangement:** The scheme must be approved by a resolution passed with the special majority stipulated in section 391(2) of the Companies Act, 1956, namely a majority in number representing three-fourths in value of the creditors, or members, or class of members, as the case may be, present and voting either in person or, by proxy.

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case out of 700 members, 400 members attended the meeting, but only 310 members voted at the meeting. As 160 members voted in favour of the scheme the requirement relating to majority in number (i.e. 155) is satisfied, 310 members who participated in the meeting held 12,40,000, three-fourth of which works out to 9,30,000 while 160 members who voted for the scheme held 10,00,000 shares. As both the requirements are fulfilled, the scheme is approved by the requisite majority. (It is presumed that all the shares are fully paid-up).

- (ii) **Preference shareholders:** The term 'member' includes preference shareholders also. Further, preference shareholders are a class of members and their rights may be affected differently in the proposed scheme of arrangement. Hence, their approval is also required.

If the Court directs separate meeting of preference shareholders and equity shareholders, then the scheme should be approved by requisite majority in both such meetings held as per directions of the Court.

- (b) **Reconstruction Scheme of the Company:** The provisions contained in sections 391 to 394 of the Companies Act, 1956 are applicable to Pathway Limited as it can be considered as a company liable to be wound up within the meaning of section 390 of the Companies Act, 1956. The proposed scheme involves a compromise or arrangement with members and creditors and it attracts section 391 of the said Act.

While the company or any creditor or member can make application to the Court under section 391, it is usual for the company to make an application. On such application the Court may order that a meeting of creditors and/or members be called and held as per the directions of the Court.

The company must send notice of meeting to every creditor/member containing a statement setting forth the terms of compromise or arrangement explaining its effect. Material interest of directors, Managing Director or manager of the company in the scheme and the effect of scheme on their interest should be fully disclosed (Section 393). At the meetings convened as per directions of the Court majority in number representing at least 3/4th in value of creditors/members present and voting must agree to compromise or arrangement. Thereafter the company must present a petition to the Court for confirmation of the compromise or arrangement.

The notice of application made by the company will be served on the Central Government and the Court will take into consideration representation, if any, made by the Central Government (Section 394A). The Court will sanction the scheme, if satisfied, after considering all relevant matters.

Copy of order issued by the Court must be filed with the Registrar of Companies and then only the order will come into effect. Copy of the said order must be annexed to every Memorandum of Association issued thereafter. The scheme

sanctioned by the Court shall be binding on all members and creditors even those who were dissenting.

Note: The power under the scheme of reconstruction etc. is still with the High Courts pending constitution of the National Company Law Tribunal.

- 11. Oppression:** The term 'oppression' is not defined in the Companies Act, 1956. Oppression, according to the Dictionary meaning of the word, is any act exercised in a manner burdensome, harsh and wrongful. The meaning of the term 'oppression' was explained by Lord Cooper in the Scottish case of *Elder v. Elder and Watson Ltd*, as given below:

"The conduct complained of should be at the lowest involve a feasible departure from the standards of fair dealing and the violation of the conditions of fair play on which every shareholder entrusting his money to the company is entitled to rely.

- (i) *Oppression of a member as a director:* The oppression dealt with by section 397 is only oppression of members in their character as such; and it is only in that character they can involve section 397. The harsh treatment, for instance, of a member who is a director or other officer or employee, by the Board of directors or management does not come within section 397. It has been held in *Re. Bellador Silk Ltd.* that if the majority of the Board of directors override the minority directors, the latter cannot resort to section 397 and hence the minority directors will not succeed in getting relief from CLB on the ground of oppression.
 - (ii) *Right not confined to minority:* According to section 399, the right to apply for relief under section 397/398 is given to 100 members or 1/10th of the total number of members or any member or members holding not less than 1/10th of the issued share capital of the company. There is nothing in this section which suggests even indirectly that unless the application is made by minority shareholders it is not maintainable. The right to apply is, therefore, not confined to oppressed minority of the shareholders alone. It was held by Kolkata High Court in *Re. Sindhri Iron Foundry (P) Ltd.* that the oppressed majority also might apply for relief under section 397. Therefore, the petitioners are likely to succeed in getting relief provided the other condition laid down in section 397 (i.e. that to wind up the company would unfairly prejudice such members, but that otherwise the facts would justify the making of a winding-up order on just and equitable ground) is satisfied, even though the Delhi High Court held a contrary view in *Suresh Kumar Sanghi v. Supreme Motors Ltd.*
- 12.** Section 398 of the Companies Act, 1956 provides that a requisite number of members of the company as laid down in section 399 may apply to Company Law Board for appropriate relief on the ground of mismanagement of the company.
- (i) **Conditions Precedent:** Section 398 can be invoked in either of the two circumstances:
 - (a) that affairs of the company are being conducted in a manner prejudicial to the interests of the company [Section 398(1)(a)]; or

- (b) that a material change has taken place in the management or control of the company and as a consequence the affairs of the company may be conducted in a manner prejudicial to the public interest or in a manner prejudicial to the interests of the company [Section 398(1)(b)].

(ii) **Considering the above, the questions as asked can be answered as under:**

- A Continuation of directors in their office after the expiry of their term and infighting among them has been held to be the act of mismanagement. (*Ranjan Dutta vs. Bhola Nath Paper House Ltd. (1983)*).
- B Non-declaration of dividend when it does not lead to devaluation of shares is not an act of mismanagement. (*V.J. Thomas Vettom vs. Kuttanad Rubber Co. Ltd. (1984)*).

- 13 (a) Overriding preferential payments:** The amount realized from assets is to be distributed to various kinds of creditors in accordance with the provisions of sections 529, 529A and 530 of the Companies Act, 1956. According to the proviso to Section 529(1)(c) the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein. The workmen's portion is to be worked out as per section 529(3)(c).

$$\text{Workmen's portion of the security} = \frac{\text{Workmen's dues} \times \text{Amount Realized}}{\text{Workmen's dues} + \text{Amount due to secured creditors.}}$$

Section 529A provides for overriding preferential payment. According to the said section the workmen's dues and that part of the secured debt which cannot be realized because it has been appropriated towards workmen's dues shall be paid in preference to all other debts. Section 529A overrides the preferential claim under section 530 (taxes payable to Government in this case).

In this case, all the assets of the company in liquidation have been charged to the secured creditor. Unless the property by which the debt is secured realizes an amount equal to at least to the total of workmen's dues and the secured debts, other creditors will not get any amount. In this case the amount realized from the security is ₹ 80 lakhs, while the amount due to the workmen and secured creditors (i.e. bankers) aggregate to ₹ 125 lakhs.

$$\begin{aligned} \text{Amount available for distribution of workmen's dues} &= \frac{25,00,000}{25,00,000 + 1,00,00,000} \times 80 \text{ lacs} \\ &= \frac{1}{5} \times 80 \text{ lac} = ₹ 16 \text{ lacs.} \end{aligned}$$

$$\text{Amount available to secured creditor} = ₹ 80 \text{ lacs} - 16 \text{ lacs} = ₹ 64 \text{ lakhs.}$$

Hence, no amount is available for payment of Government dues and unsecured creditors.

- (b) **Misfeasance:** The term 'misfeasance' has not been defined in the Companies Act, 1956. It can be considered as an act or omission in the nature of breach of trust in relation to the company which causes losses or injuring to the company. Although loss to the company has not been expressly stated in Section 543 nevertheless such 'loss' has to be implied in case of misapplication or retainer. Only such an act of misfeasance as results in the loss to the company will fall within the ambit of section 543.

As regards the second question (ii) in case of death of the directors, the Supreme Court held that the proceedings commenced against the delinquent director of a company liquidated under section 543 can be continued after his death against his legal representatives and the amount declared to be due in such misfeasance proceeding can be realized from the estate of the deceased on the hands of his legal representatives. The Court further held that the legal representatives would not, however, be liable for any sum beyond the value of the estate of the deceased in their hands (*Official Liquidator, Supreme Bank Ltd. V.P.A. Tendolkar (1973) 43 Comp. (Case 382) (Official Liquidator vs. Parthasarthy Sinha (1983) 53. Comp. Case (SC) (3c)*). Hence the misfeasance proceeding can be continued against the legal representatives of A.

14. (i) **Total number:** Every producer company shall have at least 5 directors and not more than 15 directors. In case of inter-State Cooperative Society incorporated as a producer company, such company may have more than 15 directors for one year from the date of its incorporation as a producer company. (Section 581O)
- (ii) **Tenure:** The period of office of a director shall be not less than one year and not exceeding five years. (Section 581P)
- (iii) **Time limit for appointment:** The election of Directors shall be conducted within 90 days from the date of registration of the producer company. In case of Inter-State Cooperative Society, the election shall be held within a period of one year, provided at least 5 directors hold office on the date of transformation into a producer company. (Section 581P)
- (iv) **Co-option of directors:** The Board may also Co-opt for one or more expert directors or additional directors, which cannot exceed 1/5th of the total number of directors. (Section 581P)
- (v) **Voting powers of co-opted directors:** The expert directors shall not have the right to vote in the election of chairman but shall be eligible to be elected as chairman if it is provided by the articles. (Section 581P)
- 15 (a) (i) **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.

- (ii) Any individual, who is an existing director of a company or intends to be appointed as a director of the company, can file an application for allotment of DIN. A regular DIN allotted by Regional Director (NR) Noida is valid for the Life-time of the individual and shall not be allotted to any other person during his life time.
- (iii) The scanned documents required to be attached with DIN 1 are following:
- High resolution photograph of the applicant.
 - Copy of pan is mandatory for identity, name, father's name and date of birth. Proof of father's name is not required in the case of foreign nationals.
 - Copy of passport is mandatory as an id proof in the case of foreign nationals.
 - Present Address proof which should not be older than 2 months.
 - Annexure – 1 as per the format given on the website i.e. www.mca.gov.in
- (b) **Compoundable and Non Compoundable Offences:** Compoundable offences are those offences under the Companies Act, 1956 which can be compounded by the Regional Director if the maximum amount of fine is upto ` 50,000 and by the Company Law Board if the maximum amount of fine exceeds ` 50,000. There are certain offences punishable with imprisonment or with fine or both, which can be compounded with the permission of the Court under Section 621A (6) (a) of the Companies Act, 1956. Non-compoundable offences are those punishable with imprisonment and fine under Section 621 A (7) (b) of the Act.
- (i) Failure to hold the annual general meeting of the company is compoundable under section 168 of the Act because there is only a monetary penalty.
- (ii) Failure to file copies of annual accounts with the Registrar of Companies is also compoundable under Section 220 (3) because there is monetary penalty only.
- (iii) Acceptance of deposits in excess of the prescribed limits is a non-compoundable offence under Section 58A (6) (a)(i) because it is punishable with imprisonment and fine.
- (iv) Non distribution of dividend to the members within the prescribed time limit of 30 days under Section 207 is also non-compoundable because it is punishable with imprisonment and also fine.
16. Section 617 of the Act defines a Government company as any company in which, not less than fifty-one percent of the paid-up capital is held by the Central Government and partly by any State Government or Government or partly by the Central Government and

partly by one or more State Governments. It also includes a company, which is a subsidiary of a Government company as thus defined.

Under Section 619(2), the auditor of a Government company shall be appointed or re-appointed by the Central Government on the advice of the Comptroller and Auditor General of India. Even when the Government holding is only State Government or Governments, the Central Government will appoint the auditor.

According to section 619B, the provisions of section 619 shall apply to a company in which not less than 51% (impliedly, may be more) of the paid up share capital is held by one or more of the following or any combination thereof, as if it were a Government company: (a) the Central Government and one or more Government companies (b) and State Government(s) and one or more Government companies; (c) the Central Government, one or more State Governments and one or more Government companies; (d) the Central Government and one or more corporations owned or controlled by the Central Government; (e) the Central Government, one or more State Governments and one or more corporations owned and controlled by the Central Government; (f) one or more corporations owned or controlled by the Central Government or the State Government; (g) more than one Government company.

Thus, applying the above provisions:

- (i) The holding of Uttar Pradesh Government and Central Government in Dream Construction Ltd. is 40.83%. Thus, Dream Construction Ltd. is not a Government company, since the aggregate holding of the Central Government and State Governments does not amount to 51% or more of the paid up share capital.
- (ii) As more than 51% of paid up share capital of Dream Construction Ltd is held by Central Government, Uttar Pradesh Government, and the Bharat Heavy Electricals Ltd (Corporation owned or controlled by Central Government), thus section 619B is applicable. So, the appointment of auditors of Dream Construction Ltd. shall be made by the Comptroller and Auditor General of India (CAG), within 1 month of incorporation of the company. (On or before 3rd November, 2012)

17

Specimen Minutes

Minutes of..... meeting of the Board of Directors of BOP Limited, Chandigarh held on Monday, the 1st July, 2013, at Chandigarh

Present:

1. Chairman
2. Director
3. Director

In attendance Secretary

Item No. 1: Leave of absence:

Leave of absence was granted to directors.

Item No. 2: Confirmation of minutes of the..... Board meeting:

The minutes of the..... meeting of the Board of Directors held on..... were considered and confirmed.

Item No. 3: Appointment of Managing Director:

The Board noted the appointment of Mr. Keshav director of the company as the Managing Director of the company. In this connection, the following resolutions were passed:

"Resolved that Mr. Keshav who fulfils the conditions specified in Parts I and II of Schedule XIII to the Companies Act, 1956, be and is here by appointed as the Managing Director of the company for a period of five years effective from 1st July, 2013 and that he may be paid remuneration by way of salary, commission and perquisites in accordance with Part II of Schedule XIII of the Act.

Resolved Further that in the event of loss or inadequacy of profit the salary payable to him shall be subject to the limits specified in Schedule XIII.

Resolved further that the Secretary of the company be and is hereby directed to file the necessary returns with the Registrar of Companies and to all acts and things as may be necessary in this connection."

Item No. 4: Next Board Meeting:

The next meeting of the Board will be held on..... the..... 20.... at the registered office of the company. The meeting ended with a vote of thanks to the chair.

18. According to Regulation 4 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, 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 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 (i) Lock-in period for the shares allotted on preferential basis: Regulation 78(4), SEBI, (ICDR) Regulations, 2009.

As per the aforesaid regulation, 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.

Accordingly, the first lot of 30 lac full paid equity shares issued on 30th June, 2013 will have a lock-in period of 1 year from the date of allotment i.e. till 30th June, 2014. In respect of the second lot, of partly paid 20 lac equity shares, the lock in period will be till 30th November, 2014 being the date on which the balance amount shall be called and paid up on 30th November, 2013.

(ii) Persons not entitled for allotment of shares on preferential basis (Regulation 72)

- (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:

Provided that 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 of this 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.

Accordingly, as given in the problem, persons are holding their shares in Basil Ltd. in physical form and not in dematerialised form and persons who had sold their entire shareholding in Basil Ltd. in January, 2013 shall not be eligible for preferential allotment of shares.

- 20 (a) In order to prevent undesirable transactions in securities and to promote healthy stock market, the Securities Contract (Regulation) Act, 1956 was enacted. Stock Exchanges are recognized under the Act. Section 73 of the Companies Act, 1956 lays down that offer of shares or debentures to public for subscription shall be only after the permission of the Stock Exchange. Section 28 of the Securities Contract (Regulation) Act, 1956 says that the provisions of the Act shall not apply to the Government, the Reserve Bank of India, any local authority or any corporation set-up by a special law or any person who has effected any transaction with or through the agency of any such authority as stated above. The Electro Optimum Corporation is a corporation established under a special statute enacted by the Parliament. Therefore, the Corporation need not require permission of any Stock Exchange. It is exempted. There is no violation of the provisions of the Act of 1956 because according to section 28 provisions are not applicable to this corporation.
- (b) In accordance with 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 anything 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 of being heard (in the given matter) to the governing body of such Stock Exchange, 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 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:

- (i) the members of the governing body of such Stock Exchange cease to hold office as such members on and from the date of notification.
- (ii) 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.
- (iii) 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 Stock Exchange shall vest in such person or persons.

- 21 (a)** (i) As per provisions of section 2(v)(ii) of the Foreign Exchange Management Act, 1999 (FEMA) any person or body corporate registered or incorporated in India is a "Person resident in India". As per section 2(v) of the said Act the term "person" includes a company. Section 2(v)(iv) of the said Act states that an office, branch or agency outside India owned or controlled by a person resident in India is a "Person resident in India".

In the light of the above provisions of FEMA, the residential status of the New York branch of Karat Ltd is that of a "Person resident in India" from the date of its establishment since it is owned by a person, i.e., a company, resident in India.

- (ii) As per provisions of section 2(v)(iii) of the Foreign Exchange Management Act, 1999 (FEMA) an office, branch or agency in India owned or controlled by a person resident outside India is a "Person resident in India". Section 2(w) of the said Act states that a person who is not resident in India is a "Person resident outside India".

On application of the above provisions of FEMA, it can be concluded that Dime Ltd. is a "Person resident outside India" and the residential status of its branch in Chandigarh, India, is that of a "Person resident in India" from the date of its establishment.

- (iii) As per provisions of section 2(v)(iv) of the Foreign Exchange Management Act, 1999 (FEMA) an office, branch or agency outside India owned or controlled by a person resident in India is a "Person resident in India". Here, the Singapore branch of Dime Ltd. is controlled by its Chandigarh branch which is a "Person resident in India". Therefore, the residential status of the Singapore branch of Dime Ltd. shall be that of a "Person resident in India".

(b) Sections 15 of Foreign Exchange Management Act, 1999 (FEMA) authorizes the Reserve Bank of India and Enforcement Directorate to compound contravention on an application made by any person who has committed contravention. The process and procedure of compounding is as under:

- (i) An application for compounding of a contravention under the FEMA may be submitted to the compounding authority either on being advised of a contravention or either through a memorandum or suo moto on being made or becoming aware of the contravention. The application should be as per format in the Foreign Exchange (Compounding proceeding) Rules.
- (ii) Application for compounding in prescribed form together with a copy of the memorandum wherever applicable with the prescribed fee has to be submitted with relevant facts and supporting documents to the compounding authority.
- (iii) The compounding authority may call for any information/record or any other documents relevant to the compounding proceedings.
- (iv) Where additional information/documents are called for, such information shall be submitted within thirty days or such additional period as may be given by the compounding authority from the date of the said letter. In case the contravener fails to submit additional information/document called for within the specified period, the application for compounding will be liable for rejection.
- (v) On receipt of the application for compounding, the proceeding would be concluded and the order issued by the compounding authority within 180 days from the date of the receipt of the application for compounding.
- (vi) The sum for which contravention has been compounded shall be paid within 15 days from the date of order of compounding.
- (vii) The payment towards application fee and the sum for which contravention has been compounded shall be paid by demand draft in favour of compounding authority.

Thus, Mr. Shekhawat will have to follow the above procedure for compounding his offences.

22 (a) According to section 22 of the Competition Act, 2002:

- (i) The Commission shall meet at such times and places, and shall observe such rules and procedure in regard to the transaction of business at its meetings as may be provided by regulations.
- (ii) The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior-most Member present at the meeting, shall preside at the meeting.

- (iii) All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or/casting vote provided that the quorum for such meeting shall be three Members.
- (b) The term 'enterprise' is defined in section 2(h) of the Competition Act, 2002. Accordingly, 'enterprise' means a person or a department of the Government, who or which is engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind. But the term does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space. Thus, specific sovereign functions of the Government like police, defence etc and Government departments like dealing with atomic energy etc are specifically excluded from the purview of the definition.

Hence, a Government department engaged in the activity of providing service in the form of supply of water for irrigation to the agriculturists after levying charges can be considered as an 'enterprise' within the meaning of section 2(h) of Competition Act, 2002.

- 23 (a) Where the language used in a statute is capable of more than one interpretation, we apply the rule of 'purposive construction'. It is also known as 'rule of beneficial construction' or 'mischief rule' or 'Heydon's rule'. This rule enables consideration of four matters in construing an Act:
- (i) what was the law before the making of the Act;
 - (ii) what was the mischief or defect for which the law did not provide;
 - (iii) what is the remedy that the Act has provided; and
 - (iv) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If, however, the circumstances show that the phraseology in the Act is used in a larger sense than its ordinary meaning then that sense may be given to it. If the object of a statute is public safety then its working must be interpreted widely to give effect to that object. Thus, the legislature having intended, while passing the Workmen's Compensation Act, 1923 that every workman in the prescribed trade should be entitled to compensation, it was held that the Act ought to be so construed, as far as possible, as to give effect to its primary provisions.

It has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and reasonably capable of more than one meaning.

- (b) The legislature defines or explains or give definitions of certain terms, words or expressions used in the statute. When a word or phrase is defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it in interpreting a section of the Act unless there be anything repugnant to the subject or context. The Court cannot ignore the statutory definition and try and extract what it considers to be the true meaning of the expression independently of it.

The purpose of a definition clause is two-fold: (i) to provide a key to the proper interpretation of the enactment, and (ii) to shorten the language of the enacting part by avoiding repetition of the same words contained in the definition part every time the legislature wants to refer to the expressions contained in the definition.

The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extension of the same. There can be three ways of writing a definition:

- (i) When a word is defined to 'mean': the definition is prima facie restrictive and exhaustive. We must restrict the meaning of the word to that given in the definition section.
- (ii) When a word is defined to 'include': the definition is prima facie extensive and its meaning can also comprise of something more in addition to the meaning assigned to it in the definitional clause.
- (iii) When a word is defined to 'means and includes': here again the definition would be exhaustive.

- 24 (a) According to Section 5 of SARFAESI Act, 2002, notwithstanding anything contained in any agreement or any other law for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution-

- (i) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or
- (ii) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

In case the bank or financial institution is a lender in relation to any financial assets acquired by the securitisation company or the reconstruction company, then such

securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to the subject financial assets.

- (b) Balance sheet & profit & loss account as prepared in terms of section 29 of the Banking Regulation Act, 1949, are subject to audit by a person duly qualified under any law for the time being in force to be an auditor for auditing such balance sheet and profit & loss accounts. (These Auditors are known as Statutory Auditors for the said purpose and appointment /reappointment or removal is subject to prior approval of the Reserve Bank of India (RBI). Under these Statutory Auditors there are numbers of External Auditors who conduct audit operation of the branch accounts)

Further RBI can for special Audit of Banking Company, if it is of the opinion that it is in the public interest or in the interest of the depositors. The auditors shall comply with the directions given by the RBI and shall submit a report of the audit to RBI and also to the bank. The auditor shall have the powers and exercise the functions as specified in section 227 of the Companies Act, 1956.

Apart from the above, the auditor is required to state in his report:

- Whether or not the information and explanation required by him have been found to be satisfactory
 - The transactions of the bank which have come to his notice have been within the powers of the bank or not
 - The return received from branch offices have been found adequate for the purpose of his audit
 - Whether the profit and loss account shows a true balance of profit or loss for the period covered by such account
 - Any other matter which he considers should be brought to the notice of the share holders of the company
- 25 (a) Section 43 empowers the Central Government (in consultation with the Chief Justice of the High Court) for trial of offence of money laundering, to notify one or more Courts of Sessions as Special Court of Special Courts for such area or areas or for such cases as may be prescribed in the notification to this effect. Section 44 clearly provides for the offences triable by Special Courts. It overrides the provisions of the Code of Criminal Procedure, 1973 and provides that –
- (i) the schedule offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed;
 - (ii) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is

committed to it for trial. The requirement of police report of the facts which constitute an offence under this Act is no more applicable.

- (b) Section 56 of the Prevention of Money Laundering Act, 2002, provides for agreements with foreign countries so that there is proper exchange of information with them.

The Central Government may enter into an agreement with the Government of any country outside India for-

- (i) enforcing the provisions of this Act;
- (ii) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act.

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.