

MOCK TEST PAPER – 1

FINAL COURSE: GROUP – I

PAPER – 4 : CORPORATE AND ALLIED LAWS

SUGGESTED ANSWERS/HINTS

1. (a) As per Section 260 of the Companies Act, 1956, Board can appoint additional directors provided the Articles give power to the Board to appoint such directors, and provided the number of directors and additional directors shall not exceed the maximum strength fixed by the Articles. In the instant case, after the appointment of 3 additional directors, the total strength of the Board will go up to 12, which is within the maximum fixed by the Articles. Hence, Board can appoint the additional directors.

- (b) A director can resign from his office by serving a notice of his resignation upon the Company or the Board. There is no need for its acceptance by the Board or the Company.

However, if a Managing Director resigns, he cannot give up his office at his pleasure simply by serving the notice. This is because he occupies two positions i.e., of a director and an employee. In case of Managing Director, the notice or letter of resignation is required to be approved or accepted by the company and he has to be relieved of his duties and responsibilities attaching to his office from which he has resigned. Similar views were accepted in the case of *Achutha Pal vs. Registrar of Companies (1956) 36 Comp. Cases 598*.

Accordingly, in the given case, the resignation of A, the Managing Director shall be effective when approved or accepted by the company and he is relieved of his duties and responsibilities attaching to his office from which he has resigned.

- (c) As per Section 7A(1) of the Securities Contracts (Regulation) Act, 1956, a recognized stock exchange may make rules or amend any rules made by it in respect of voting rights of its members and also on appointment of proxy. The restrictions can be put in respect of the following matters:
- (a) The restriction of voting rights to the members only in respect of any matter placed before the stock exchange at any meeting.
 - (b) The regulation of any voting rights in respect of any matter placed before the stock exchange at any meeting so that each member may be entitled to have one vote only, irrespective of his share of the paid up equity capital of the stock exchange.
 - (c) The restriction on the right of a member to appoint another person as his proxy to attend and vote at a meeting of the stock exchange.

- (d) Such incidental, consequential and supplementary matters as may be necessary to give effect to the matters as stated in (a), (b) and /or (c) above.

As per section 7(A)(2) of the said Act, the role of the Central Government in respect of the restriction placed by the stock exchange as stated above is as follows:

- (i) Approval of the proposed changes by the stock exchange.
- (ii) Publishing the same in the Official Gazette.
- (iii) To make such modification in the proposed changes as it deems fit.

- (d) **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, the company has violated the provisions of section 212 in not furnishing the particulars of the foreign subsidiary.

- 2. (a) (i) The case started in the question relates to the provisions of sections 397 and 398 of the Companies Act, 1956 with regard to remedy available to majority shareholders.

Where the majority is prevented from protecting itself by controlling the directors at general body meetings, the majority becomes an artificial minority entitled to claim protection under Section 397 and 398 (*V. Sebastean, Dr V City Hospital (Pvt.) Ltd. (1985) 57 Comp. case 453 (Ker)*) Thus the remedy under Section 397 and 398 is confined not to an oppressed minority of the shareholders alone; an oppressed majority may also apply to the Company Law Board against their oppression from the side minority shareholders. In *Sindhri Iron Foundry (Pvt.) Ltd. Re (1963) 78 E. to N. 118*, issue and allotment of a number of shares in a company whereby an admitted majority of shareholders was reduced to a minority was struck down. While granting relief to a majority group, Mitra J observed in their case;

“If the Court (now the Company Law Board) finds that the company’s interest is being seriously prejudiced by the activities of one or the other group of

shareholders, that two different registered offices at two different addresses have been set up, that two rival boards are holding meetings, that the company's business property and assets have passed into hands of unauthorized persons who have taken wrongful possession and who claim to be the shareholders and directors, there is no reason why the Court (now the company Law Board) should not make appropriate orders to put an end to such matters".

(ii) Relief by the Company Law Board: The Company Law Board may give relief if it is of opinion:

1. that the company's affairs are being conducted (a) in a manner prejudicial to public interest, or (b) in a manner oppressive to any member or members;
2. that the facts justify the compulsory winding up order on the ground that it is just and equitable that the company should be wound up;
3. that to wind up the company would unfairly prejudice the applicants.

On being satisfied about the above requirements, the Company Law Board may pass such order as it thinks fit with a view to bring an end to the matters complained of this provision would help salvage an otherwise sound concern which would have been, but for this principle, forced to into winding up.

- (b)** Under section 220(1) of the Companies Act, 1956, after the balance sheet and profit and loss account have been laid before the annual general meeting, three copies thereof be filed with the Registrar of Companies, within 30 days from the date on which the Accounts were laid at the Annual General Meeting. Where the Annual General Meeting for any year has not been held, the accounts shall be filed with the Registrar of Companies within 30 days from the latest date when the Annual General Meeting ought to have been held in accordance with the provisions of the Act, namely, Sections 166 and 210 of the Act. Under section 220(2), it is also provided that if annual general meeting does not adopt the annual accounts or if the Annual General Meeting for any year is not held, a statement of that fact and of the reasons shall be annexed to the accounts filed with the Registrar of Companies.

Accordingly,

- (i) In the present case though Annual General Meeting was not held, it ought to be held by 30th September 2010 under sections 166/210 of the Act. Thus, the balance sheet and profit and loss account for the year ended 31st March 2010 be filed with the Registrar of Companies by 29th October 2010 along with a statement that Annual General Meeting was not held by 30th September 2010 as the accounts were not ready.
- (ii) Since the Annual General Meeting has been held in time on 27th September 2010, the balance sheet and profit and loss account as at 31st March 2010 be

filed with the Registrar of Companies by 26th October 2010. A statement be also annexed to the balance sheet that the accounts were not adopted at the Annual General Meeting held on 27th September 2010 giving reasons there for.

3. (a) In accordance with the provisions of Section 274(1)(g) of the Companies Act, 1956, a person shall not be capable of being appointed as director of a company if such person is already a director of a public company, which –

- (A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999;

Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of 5 years from the date on which such public company, in which he is a director failed to file annual accounts and annual returns under this clause.

Applying the above provisions as contained in Section 274(1)(g), answers to the given questions are:

1. In the given case, Mr. Clever, the Director of ABC Ltd. is disqualified to be appointed as Director of other public companies for a period of 5 years from the date on which default has been committed.
2. In the second case, Mr. Clever, as a nominee of the Public Financial Institution, shall not be disqualified to be appointed as Director for the reason that the Public Financial Institutions are exempted from the provisions of Section 274(1)(g) of the Companies Act, 1956.
3. A director of a private company is not disqualified even if that company is a defaulter in filing return.

Mr. Clever does not cease to be a director in ABC Ltd. and EF Ltd. immediately because Section 283 which provides for 'vacation of office' has not been amended. He can continue as a director till his term ends. But he can be reappointed in the defaulting company ABC Ltd., but not in EF Ltd. as the disqualification applies only to 'any other public company'.

(b) General Powers vested in the Board of Directors:

The provisions relating to the general powers which are vested are given under Section 291 of the Companies Act, 1956. As per this section, the Board of Directors of a company is entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do. This means the powers of the Board of Directors are co-extensive with those of the company. The proposition is, however subject to two conditions:

Firstly, the Board shall not do any act which is to be done by the company in general meeting. Secondly, the Board shall exercise all such powers subject to the

provisions contained in the Companies Act, 1956 or in the Memorandum or the Articles of the Company or in any regulations made by the Company in general meeting. But no regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

It is the first and elementary principle of company law that when powers are vested in the Board of directors by the Articles of a company, they cannot be interfered with by the shareholders as such (*Murarka etc. Works Ltd. vs. Mohal Lal AIR (1961) Col 251*).

In exercising their powers the directors do not act as agent for the majority members or even all the members. The members therefore cannot by resolution passed by a majority or even unanimously supersede the powers of directors or instruct them how they shall exercise their powers. The above problem is based on decision given by the *Chancery Court in the case Automatic Self Cleansing Filter Syndicate Co. Ltd. Vs. Cunninghame (1906) 2ch 34* and this case also followed in India in *MPLV Works vs Murarka AIR 1961 Col 251*.

In view of above discussion, the contention of shareholders against the non-compliance of their wish by the directors is not tenable and shareholder cannot usurp the power which by articles vested in the directors by passing even a resolution of a numerical majority at the general meeting. The shareholders have, however, the power to alter the Articles of Association of the company in the manner they like subject to the provisions of the Companies Act, 1956.

4. (a) Section 285 of the Companies Act, 1956 requires Board of Directors to meet at least once in every three months, respective of whether it is the board of a public Company or a private Company and at least four such meetings must be held in every year. However, the Central Government may, by notification in the Official Gazette, direct that these provisions will not apply in relation to any class of Companies or will apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification.

As per Section 288 of the Act, if a meeting of the board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till 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, at the same time and place.

The provisions of Section 285 shall not be deemed to have been contravened merely by reason of the fact that a meeting of the board which had been called in compliance with the terms of that Section could not be held for want of a quorum.

As the meeting could not be held for want of quorum, it cannot be said that PQR Ltd has violated the provisions of Section 285 of the act.

Notice of every 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 (Section 286). 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 ₹ 1000 (Section 286).

As no notice was served to two directors Mr. P and Mr. Q, officer of the Company who is responsible for the default shall be punishable with fine to the extent of one thousand rupees.

The Supreme Court, in case of *Parmeshwari Prasad vs. Union of India* (1974) has held that the resolutions passed in the board meeting shall not be valid, since notice to all the Directors was not given in writing. Notice must be given to each Director in writing. Hence, even though the directors concerned knew about the meeting, the meeting shall not be valid and resolutions passed at the meeting also shall not be valid.

(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 injury 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 liquidation 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.

5. (a) (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 simply 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)].
- (b) To determine, whether CALM Ltd can proceed with the public issue of equity shares amounting to ₹ 10.00 crores, one has to find out whether the company satisfied Regulation 26 of the SEBI (ICDR) Regulations, 2009 applying clause (c) of the said Regulation, 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. In this case, it exceeds 5 times the net worth as on 31st March, 2004. (Proposed issue is ₹ 10 crores and net worth as at 31st March, 2003 is ₹ 1.5 crores). Since the company does not satisfy the above stated condition, it has to satisfy any of the alternate conditions specified in Clause 2(a)(b), which states that,

the issue is made through the book building process and the issuer undertakes to allot at least

fifty per cent. of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers ; or

at least fifteen per cent. of the cost of the project is contributed by scheduled commercial banks or public financial institutions, of which not less than ten per cent. shall come from the appraisers and the issuer undertakes to allot at least ten per cent. of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make the allotment to the qualified institutional buyers;

- a. (i) the minimum post-issue face value capital of the issuer is ten crore rupees; or
- (ii) the issuer undertakes to provide market-making for at least two years from the date of listing of the specified securities, subject to the following:
 - (A) the market makers offer buy and sell quotes for a minimum depth of

three hundred specified securities and ensure that the bid-ask spread for their quotes does not, at any time, exceed ten per cent.;

- (B) the inventory of the market makers, as on the date of allotment of the specified securities, shall be at least five per cent. of the proposed issue.

6. (a) 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 RBI. Under these Statutory Auditors there are numbers of External Auditors who conduct audit operation of the branch accounts)

Further Reserve Bank can order 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 Indian 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

(b) Procedure:

1. When the business or the registered users access the My MCA portal, they enter their username and authentication details – Password/ Digital Certificate.
2. The user will be shown a list of eForms category-wise under **eForms** tab.
3. At any time, the users can read the related instruction kit, available under **Help** menu, to authorized themselves with the procedures.
4. The users can then fill the appropriate eForm for the service required. There is an option of pre-fill facility in the eForms, where the static details such as

name and address of the company will be pre-filled by the system automatically on entering the Corporate Identity Number (CIN).

5. The users attach the necessary documents to the eForm.
 6. The users may avail the pre-scrutiny service of the eForm. The documents will be verified (pre-scrutinised) by the system. In case of any inadequacies, for example, if a mandatory column in the eForm is not filled in, the user will be asked to rectify before the document is ready for execution (signature).
 7. The applicant or a representative of the applicant will then submit the duly signed documents electronically through Digital Signatures.
 8. The system will calculate the fee, including late payment fees, if applicable.
 9. Payments will have to be made through appropriate mechanisms – electronic (credit card, Internet banking) or traditional means (at the bank counter).
 - (a) Electronic payments can be made at the Virtual Front Office (VFO).
 - (b) If the user selects the traditional payment option, the system will generate a pre-filled challan in the prescribed format. Traditional payments through cash, cheques can be done at the designated network of banks using the system generated challan. There will be five banks with estimated 200 branches authorized for accepting challan payments.
 10. The payment will be exclusively confirmed for all online (Internet) payment transactions using payment gateways.
 11. Acceptance or rejection of any transaction will be explicitly communicated to the applicant (including facility to print a receipt for successful transactions).
 12. MCA 21 will provide a unique transaction number, which can be used by the applicant for enquiring status pertaining to that transaction.
 13. Filing will be complete only when the necessary payments are made.
 14. In case of a rejection, helpful remedial tips will be provided to the applicant.
 15. The applicants will be provided an acknowledgement through e-mail or alternatively they can check the MCA portal.
7. (a) (i) No. Mr. Ram cannot be considered 'Person resident in India' during the financial year 2010-2011 notwithstanding the purpose or duration of his stay in India during 2010-2011. An individual has to be present in India for more than 182 days in the preceding financial year. Mr. Ram does not satisfy this condition for the financial year 2010-2011.
- (ii) No. Citizenship is no more relevant for determining the status.
- (b) **Enterprise:** The term 'enterprise' is defined in Section 2(h) of 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 relating to 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.

Certain specific activities of Government departments like dealing with atomic energy, etc., and sovereign functions of the Government (like police, defence, etc.) are excluded from the purview of the said terms. 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.

- (c) As per provisions of section 581-O of the Companies Act, 1956, any Producer Company can not have more than fifteen directors. However, by way of a proviso, the said section further provides that in the case of an inter-State co-operative society which is incorporated as a Producer Company, may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company.

In view of the above provisions of the Companies Act, 1956 the proposal to have 18 directors by the Producer Company after its incorporation as such, is a valid proposition, but since it is incorporated on 1st May, 2010, it can have more than 15 directors for one year only from the date of its incorporation.

- (d) (i) **Title:** An enactment would have what is known as 'Short Title' and also a 'Long Title'. The short title merely identifies the enactment and is chosen merely for convenience. The 'Long title' describes the enactment and does not merely identify it.

The Long title is a part of the Act and, therefore, can be referred to for ascertaining the object and scope of the Act.

- (ii) **Preamble:** It expresses the scope and object of the Act more comprehensively than the long title. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to be remedied by it. The preamble like the Long title can legitimately be used for construing it. However, the preamble cannot override the provisions of the Act. Only if the wording of the Act gives rise to doubts as to its proper construction (e.g., where the words or a phrase has more than the one meaning and doubts arise as to which of the two meanings is intended in the Act) the preamble can and ought to be referred to to arrive at the proper construction.
- (e) 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.