

PAPER – 4: CORPORATE AND ALLIED LAWS

PART – I : RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER, 2014

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

1. The Companies Act, 2013

- (i) 45 sections of the Companies Act, 2013 along with the clarifications notified by the Ministry of Corporate Affairs (MCA).

Supplementary study material in this regard has been hosted on the student portal, ICAI at the following link <http://220.227.161.86/32793ssp-p4final.pdf>

- (ii) Notified sections of Chapter IX: Accounts of Companies and Chapter X: Audit and Auditors of the Companies Act, 2013 along with its relevant Rules and clarifications notified by the MCA.

Supplementary study material in this regard has been hosted on the student portal, ICAI at the following link <http://220.227.161.86/33649bos23281.pdf>

(Hard copy of the supplementary study material is also available).

2. SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009

SEBI vide Notification dated 4th February, 2014 has issued SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2014 which is available at the following link http://www.sebi.gov.in/cms/sebi_data/attachdocs/1391509221289.pdf

3. The Foreign Exchange Management Act, 1999

- (i) The Reserve Bank of India has issued a circular dated 9th January, 2014 on Section 6 of the Foreign Exchange Management Act, 1999 which is available at the following link http://rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?id=8685

- (ii) The Reserve Bank of India has issued a circular dated 4th April, 2014 on Compounding of Contraventions under FEMA, 1999 and decided to delegate further powers to the Regional Offices of Reserve Bank of India. The circular is available at the following link

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/553APD04042014.pdf>

Non-Applicability of the following Amendments/Circulars/Notifications

S. No.	Subject Matter
1.	* New 184 sections of the Companies Act, 2013 notified on 27 th February, 2014 and 26 th March, 2014 with effect from 1 st April, 2014.
2.	* Rules notified under the Companies Act, 2013
3.	Provisions relating to Revival and Rehabilitation of Sick-Industrial Companies

***Out of above 184 sections of the Companies Act, 2013 along with its Rules, notified sections of Chapter IX: Accounts of Companies and Chapter X: Audit and Auditors of the Companies Act, 2013 along with its relevant Rules are also applicable for November 2014 examinations.**

PART – II: QUESTIONS AND ANSWERS**QUESTIONS****SECTION – A: COMPANY LAW****Accounts**

1. (a) SRL Ltd. is having its registered office in the city of Jaipur, has its manufacturing plant (Factory) located in the industrial area of New Delhi. The Board wants to keep all its books of accounts at New Delhi (Factory) instead of the registered office. Kindly advise as per the provisions of the Companies Act, 2013, can the Board of Directors do so?
- (b) With reference to provisions laid down under the Companies Act, 2013, advice on the following:
 - (i) Which Company is required to constitute CSR (Corporate Social Responsibility) committee?
 - (ii) Minimum amount of contribution towards CSR?
 - (iii) Activities which are not considered as CSR activities?

Audit

2. (a) M/s Krishna & Associates is an audit firm having 2 partners namely Mr. Krishna and Mr. Shyam. Mr. Shyam is also a partner of another audit firm named M/s Kukreja & Associates. M/s Krishna & Associates was appointed as the auditors in the company Golden Smith Ltd. for two consecutive periods i.e. from year 2014 to year 2024. Advice, whether Golden Smith Ltd. can appoint M/s Kukreja & Associates as its audit firm as per the provisions of the Companies Act, 2013?
- (b) Mr. A, a Chartered accountant is an auditor of Laxman Ltd. Subsequently, from 1st June, 2014, he has started to render actuarial services to Laxman Ltd. Advice the company keeping in view the provisions of the Companies Act, 2013.

Dividend

3. The Annual General Meeting of Bhaskar Electronics Limited declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2014. But the Company was unable to post the dividend warrant to Mr. Sanjay, an equity shareholder of the Company, up to 30th June, 2014. Mr. Sanjay filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for default period. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Sanjay would succeed? Also state the directors' liability in this regard under the Act.

Directors

4. (a) Flora Construction Limited in its General Meeting appointed all its directors by passing one single resolution. No objection was made to the resolution. Examine

the validity of appointment of directors explaining the relevant provisions of the Companies Act, 2013.

- (b) Mr. Nishant, who does not hold any shares in his name, is appointed as Director in MKT Paper Limited on 1st April, 2014. His wife holds 10,000 Equity Shares in the company in her name singly. Certain members of the company objects to Mr. Nishant's appointment on the ground that since he does not hold any shares in his own name, his appointment is violative of the provisions of the Companies Act, 1956. Articles of the company are silent on the issue of holding any shares by a Director.

Examine the provisions of the Act and decide:

- (i) Whether contention of the members is tenable?
 - (ii) Whether Mr. Nishant wife's shareholding in the company can be the ground for Mr. Nishant continuation as a director in the company?
 - (iii) What would be your answer in case Mr. Nishant is one of the subscribers of the Memorandum of Association?
5. (a) Mr. Swastik was appointed as a director at the Annual General Meeting of Bhanu Textiles Limited held on 30th September, 2013 and he carried on his duties and functions as a director. In the month of August, 2014, it was found out that there were certain irregularities in his appointment and on 31st August, 2014, his appointment was declared invalid. But Mr. Swastik continued to act as director even after 31st August, 2014. You are required to state, with reference to the provisions of the Companies Act, 2013, whether the acts done by Mr. Swastik are valid and binding upon the company?
- (b) Mr. Amit is a Director of AB Limited and PQ Limited. AB Limited was regular in filing the Annual Returns but did not file annual accounts for the years ended 31st March, 2009, 2010 and 2011. AB Limited did not pay interest on loans taken from a public financial institution from 1st April, 2011 and also failed to repay matured deposits taken from public on due dates from 1st April, 2012 onwards.

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

- (i) Whether Mr. Amit is disqualified under Section 274 (1) (g) of the Companies Act, 1956 and if so; whether he can continue as a Director in AB Limited and also seeks reappointment when he retires by rotation at the Annual General Meeting of PQ Limited to be held in September, 2013?
 - (ii) Mr. Amit is proposed to be appointed as Additional Director of XY Limited in June, 2013. Is he eligible to be appointed as Additional Director in XY Limited?
6. (a) Galaxy Medicare Limited was incorporated in the year 2008. The management of the company decides to make donation to recognized political party in the year 2014. Advise the management about the restrictions and the extent up to which such donation can be made under the Companies Act, 2013. Will it make any difference if Galaxy Medicare Limited was incorporated in the year 2012?

- (b) Mr. Fin, Managing Director of Ray Fabrics Limited from last 4 years, lost his office. As per the provisions of the Companies Act, 2013, explain the following:
- (i) state the compensation to be paid to Mr. Fin in relation to the loss of his office.
 - (ii) state the cases when no compensation is paid to the Managing Director in the situation of loss of office.

Meetings, Powers of the Boards and Related Party Transaction

7. (a) The Board of Directors of Marbles Construction Limited at a meeting held on 15th November, 2013 resolved to borrow a sum of ₹ 15 crores from a nationalized bank. Subsequently the said amount was received by the company. One of the Directors opposed the said borrowing on the ground that the said borrowing is outside the powers of the Board of Directors. The Company seeks your advice and the following data is given for your information:
- (i) Share Capital ₹ 5 crores
 - (ii) Reserves and Surplus ₹ 5 crores
- Advise the management of the company.
- (b) The Board meeting of NAMO Ltd. was held on 10th June, 2014 at Lucknow at 10.30 a.m. At the time of starting the board meeting, the number of directors present were 8. The total number of directors in the company were 10. The Board transacted eight items in the board meeting on that day. At 12 noon after the completion of four items in the agenda, 5 Directors left the meeting. Examine the validity of all these transactions explaining the relevant provisions of the Companies Act, 1956.
8. (a) Explain the provisions regarding prohibition on insider trading of securities as covered under the Companies Act, 2013.
- (b) Sweet Tea Limited wants to sell its tea by entering into contract with the following parties:
- (1) Tea Bros. a partnership firm in which a director of Sweet Tea Limited is a partner.
 - (2) R & T Private Limited in which one of the director of Sweet Tea Limited is a member.
 - (3) Strong Tea Limited in which one of the directors of Sweet Tea Limited is a director holding 3% of the paid up capital of Strong Tea Limited.
- Advise the steps that should be taken by Sweet Tea Limited taking into account the relevant provisions of the Companies Act, 1956 for entering into contracts in which the directors are interested.

Inspection and Investigation

9. A group of creditors of a company lodged a complaint with the Registrar of Companies alleging that the Directors of the company are engaged in falsification and destruction of account books and records of the company and urged the Registrar to seize the account

books and records of the company. Discuss whether the Registrar can exercise such powers under the provisions of the Companies Act, 1956.

Compromise, Arrangements and Reconstructions

10. (a) Tigerwood Furniture Limited was merged with Woodply Furniture Limited on account of amalgamation. Some workers of Tigerwood Furniture Limited refused to join as workers of Woodply Furniture Limited and claimed compensation on the ground of premature termination of their services. Woodply Furniture Limited resists the claim of the workers on the ground that their services have been transferred to Woodply Furniture Limited in view of the order of amalgamation and merger and hence the workers must join the service of Woodply Furniture Limited and cannot claim any compensation.

State the powers of the court about the matters that would be considered while sanctioning the scheme of amalgamation under the provisions of the Companies Act, 1956. Decide whether the contention of the workers is justified.

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

Prevention of Oppression and Mismanagement

11. A group of shareholders consisting of 25 members decide to file a petition before the Company Law Board for relief against oppression and mismanagement by the Board of Directors of Delightful Operators Limited. The company has a total of 300 members and the group of 25 members holds one –tenth of the total paid –up share capital accounting for one-fifteenth of the issued share capital. The main grievance of the group is that due to mismanagement by the board of directors, the company is incurring losses and the company has not declared any dividends even when profits were available in the past years for declaration of dividend. Advise the group of shareholders regarding the success of (i) getting the petition admitted and (ii) obtaining relief from the Company Law Board.
12. City Oriented Hospital Ltd. has two groups of Directors. A dispute arose between the two groups out of which one group controlled the majority of shares. A very serious situation arose in the administration of the company's affairs when the minority group ousted the lawful Board of Directors from the possession and control of the management of the company's factory and workshop. Books of account and statutory records were held by the minority group and consequently the annual accounts could not be prepared for two years. The majority group applied to the Company Law Board for relief under sections 397 and 398 of the Companies Act. You are required to decide with reference to the provisions of the said Act, the following issues:
- (i) Can majority of shareholders apply to the Company Law Board for relief against the oppression by the minority shareholders?

- (ii) Whether Company Law Board can grant relief in such circumstances.

Corporate Winding up and Dissolution

13. (a) The Directors of Shubra Fabrics Ltd. desire to proceed for voluntary winding up of the company and hence they are required to File 'Declaration of Solvency'. Your advice is sought about the procedure to be followed for the said purpose.
- (b) Explain the term "Overriding Preferential Payments" under the provisions of the Companies Act, 1956. ABC Limited is being wound-up by the Court. The official liquidator has realized ₹ 100 lakh by selling the land and buildings mortgaged by the company in favour of its bankers. The company owes ₹ 200 lakh to the bank. The bank has claimed that the amount realised by sale of land and buildings must be paid in full to it in preference to the workmen's dues to the extent of ₹ 50 lakh. Examine the Bank's claim with reference to the provisions of the Companies Act, 1956.

Producer Company

14. Western India Cotton Producer Company Limited, having paid-up capital of ₹ 6 lakh and free reserves of ₹ 4 lakh, proposes to make the following loans and investments:
- (i) Loan of ₹ 3 lakh to Mr. John, a member of the Company, for a period of one year and a loan of ₹ 2 lakh to Mr. Smith, Director of the Company for a period of six months;
- (ii) Investment of ₹ 4 lakh in the equity shares of Superb Stores Limited.

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

E-governance/ Offences and Penalties

15. (a) Who can file an application for allotment of DIN?
- (b) What things should be taken care of with regard to supporting documents?
- (c) What are the additional information/ documents required in case of a foreign national?

Companies Incorporated outside India/Miscellaneous provisions

16. (a) With reference to provisions laid down under the Companies Act, 2013, advice on the following:
- (i) Display of name, etc., of foreign company
- (ii) Service on foreign company
- (b) Under Section 603 of the Companies Act, 1956, what are the particulars required for incorporating a prospectus to be issued by an existing foreign company?

Corporate Secretarial Practice

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

The terms of appointment are as under:

- (i) Salary ₹ 1 lakh per month;
- (ii) Commission, as may be decided by the Board of Directors of the company;
- (iii) Perquisites;

Free Housing,

Medical reimbursement upto ₹ 10,000 per month,

Leave Travel concession for the family,

Club membership fee,

Personal Accident Insurance ₹ 10 lakh,

Gratuity, and

Provident Fund as per Company's policy.

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

SECTION – B: ALLIED LAWS**The Securities and Exchange Board of India (SEBI)**

18. Point out the circumstances where under the following powers may be exercised by the Securities and Exchange Board of India (SEBI):

- (i) Prohibiting a company from issuing or publishing any document or advertisement soliciting money from public for issue of securities.
- (ii) Pass cease and desist order in relation to any listed company.

What remedies are available to the companies against such orders under the SEBI Act, 1992?

19. Shyamgarh Chemicals Limited, a listed company, having a paid-up equity share capital of ₹ 80 crore and net worth of ₹ 120 crores as on 31st March, 2012 proposes to raise funds to finance its expansion programme by issue of equity shares under the "Qualified Institutions Placement Scheme."

Answer the following with reference to the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009:

- (i) What are the conditions to be satisfied by the company so that it can make Qualified Institutions Placement?
- (ii) What is the maximum amount that can be raised by the company under the proposed issue of shares?
- (iii) What are the restrictions, if any, with regard to pricing of issue and transferability of shares by qualified institution buyers?

Securities Contracts (Regulation) Act, 1956

20. (a) Mr. Yadav, a newly entered investor in the field of securities business seeks your advice on the investments to be made in securities of large Companies for long term purposes. With this object in view, he wants to know the meaning of the following terms commonly used in any stock exchange under the Securities Contracts (Regulation) Act, 1956.
- (i) Derivative
 - (ii) Option in securities
 - (iii) Spot delivery contract.
- Advise suitably.
- (b) The Securities and Exchange Board of India issued an order against a stock broker to redress the grievances of the investors within the stipulated time. The stock broker failed to do so, which is an offence under the provisions of the Securities Contracts (Regulation) Act, 1956. Decide:
- (i) Whether the offence committed by the stock broker is compoundable? If so, by whom?
 - (ii) Whether this offence can be compounded after institution of proceedings against the stock broker?

Foreign Exchange Management Act, 1999

21. (a) The Reserve Bank of India receives a complaint that an authorized person has submitted incorrect statements and information to the Reserve Bank of India in respect of receipt and utilization of Foreign Exchange. Explain the powers of the Reserve Bank of India with regard to inspection of records of the above authorized person in respect of the above complaint.
- Referring to the provisions of Foreign Exchange Management Act, 1999, also state the duties of the above authorized person in this regard.
- (b) During the financial year 2013-14 Mr. Bhattacharyya resided in India for a period of 180 days and thereafter went abroad. On 1st April, 2014, Mr. Bhattacharyya came back to India as an employee of a business organization. Decide the residential status of Mr. Bhattacharyya during the financial year 2013-14 under the provisions of the Foreign Exchange management Act, 1999.

The Competition Act, 2002

22. (a) The Competition Commission of India has received a complaint that Paperwood limited has been abusing its dominant position in the food processing industry. Explain briefly the factors that will be considered by the Commissions to ascertain whether Paperwood limited enjoys a dominant position in the industry.
- (b) Mr. Alexander was a member of the Competition Commission of India. On the basis of information that he had acquired such financial interest as was likely to affect prejudicially his functions as a member of the Commission, the Central Government appointed an officer to hold an inquiry. On the basis of report of the said officer, the Central Government issued an order of removal of Mr. Alexander. Decide whether the action of the Central Government is in order under the provisions of the Competition Act, 2002?

Interpretation of Statutes, Deeds and Documents

23. In what way are the following terms considered as 'internal aid' in the interpretation of statutes?
- (A) Illustrations
(B) Explanation
(C) Preamble
(D) Proviso

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) The Central Government acquired a Banking Company. The scheme of acquisition, apart from other matters, provided for the quantum of compensation payable to the shareholders of acquired bank. Some shareholders are not satisfied with the amount of compensation fixed under the scheme of acquisition.
- Is there any remedy available to the share holders under the provisions of the Banking Regulation Act, 1949?
- (b) RST Ltd. is a securitization and reconstruction company under SRFAESI Act, 2002. The certificate of registration granted to it was cancelled. State the authority which can cancel the registration and the right of RST Ltd. against such cancellation.

Prevention of Money Laundering Act, 2002

25. Explain the term "Offence of Money Laundering" within the meaning of the Prevention of Money Laundering Act, 2002. State the punishment for the offence of money laundering.

SUGGESTED ANSWERS/HINTS

- 1 (a) **Maintaining the books of accounts at a place other than Registered office of the company:** According to section 128(1) of the Companies Act, 2013, every company shall prepare and keep at its registered office, books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any.

The company may also keep all or any of the books of accounts at any other place in India as the Board of directors may decide. In such a case, the company should file with the Registrar of Companies, a notice in writing giving the full address of that place within 7 days of the Boards' decision.

Thus, in the present case, SRL Ltd. can follow the above procedure and keep its books of accounts at New Delhi instead of the Registered office of the company.

- (b) (i) **Which Company is required to constitute CSR committee:**

- (A) Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013 having its branch office or project office in India, having

- (1) net worth of rupees 500 crore or more, or
- (2) turnover of rupees 1000 crore or more or
- (3) a net profit of rupees 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

- (B) The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.
- (C) However, the net worth, turnover or net profit of a foreign company shall be computed in accordance with balance sheet and profit and loss account of such company as prepared in accordance with the provisions of section 381(1)(a) and section 198 of the Act.

- (ii) **Amount of contribution towards CSR:**

- (A) The Board of every company shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.
- (B) The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

- (C) If the company fails to spend such amount, the Board shall, in its report, specify the reasons for not spending the amount.
- (D) Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years. However, such expenditure shall not exceed five percent. of total CSR expenditure of the company in one financial year.

(iii) Activities which are not considered as CSR activities:

The *Companies (CSR Policy) Rules, 2014* provides for some activities which are not considered as CSR activities:

- (A) The CSR projects or programs or activities undertaken outside India.
- (B) The CSR projects or programs or activities that benefit only the employees of the company and their families.
- (C) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.

2. (a) According to second proviso to section 139(2) of the Companies Act, 2013, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

In the instant case, if Golden Smith Ltd. wants to appoint M/s Kukreja & Associates as its audit firm, it can not do so because Mr. Shyam was the common partner between both the Audit firms. This prohibition is only for 5 years i.e. upto year 2029. After 5 years Golden Smith Ltd. may appoint M/s Kukreja & Associates as its auditors.

- (b) **Prohibited services:** An auditor appointed under the Companies Act, 2013 shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely:—
- (a) accounting and book keeping services;
 - (b) internal audit;
 - (c) design and implementation of any financial information system;
 - (d) actuarial services;
 - (e) investment advisory services;
 - (f) investment banking services;
 - (g) rendering of outsourced financial services;

- (h) management services; and
- (i) any other kind of services as may be prescribed.

In the instant case, Mr. A, a chartered accountant is an auditor of Laxman Ltd. and subsequently from 1st June, 2014, he has started to render actuarial services to Laxman Ltd. which falls under the prohibited services as per section 144 of the Companies Act, 2013. Therefore Mr. A is liable for the penalty under section 147 of the Companies Act, 2013.

Penalty for providing prohibited services:

(i) Penalty on company [Section 147(1)]:

If any of the provisions of section 144 is contravened, the company shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lacs.

(ii) Penalty on officers [Section 147(1)]:

If any of the provisions of section 144 is contravened, every officer of the company who is in default shall be punishable with:

- (1) Imprisonment for a term which may extend to 1 year or
- (2) With fine which shall not be less than ₹ 10,000 but which may extend to ₹ 1 Lacs; or
- (3) Both with imprisonment and fine.

(iii) Penalty on auditor [Section 147(2) & (3)]:

- (a) If an auditor of a company contravenes any of the provisions of section 144, the auditor shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lacs.
- (b) If an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with
 - (1) imprisonment for a term which may extend to 1 year and
 - (2) fine which shall not be less than ₹ 1 Lac but which may extend to ₹ 25 Lacs.
- (c) Further, where an auditor has been convicted as above, he shall be liable to—
 - (1) refund the remuneration received by him to the company; and
 - (2) pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report..

3. Liability for failure to pay/post dividend within prescribed time

According to Section 127 of the Companies Act, 2013, dividend has to be paid within 30 days from the date of its declaration. The posting of dividend warrant by the company within 30 days will be deemed to be payment irrespective of the fact whether the shareholder has encashed it or not. Failure to pay or post dividend warrant within 30 days constitutes an offence under the Act and the company shall be liable to pay simple interest at the rate of eighteen percent per annum during the period for which such default continues.

In the instant case, the Annual General Meeting of Bhaskar Electronics Limited declared a dividend at the rate of 30% payable on paid up equity share capital of the company as recommended by the Board of Directors on 30th April, 2014. But the company was unable to post the dividend warrant to Mr. Sanjay, an equity shareholder of the company, up to 30th June, 2014.

- I In view of the above provisions, Mr. Sanjay can file a suit against the company for the payment of dividend because failure to pay or post dividend warrant within 30 days constitutes an offence under the Act. Thus, he would succeed but he is entitled for simple interest at the rate of 18% per annum (and not 20% as claimed) during the period for which such default continues.
- II Every director of the company, if he is knowingly a party to the default, is punishable with simple imprisonment for a term which may extend to two years and also to a fine of one thousand rupees for every day during which such default continues.

4. (a) Section 162(1) of the Companies Act, 2013, requires that the appointment of every director shall be voted on individually. Thus, two or more directors cannot be appointed by a single resolution. However, an exception has been carried out where under if a resolution has been first passed to the effect that all the directors shall be appointed by a single resolution without any vote being against it.

As per section 162(2) of the Companies Act, 2013, any resolution in contravention of the aforesaid provisions shall be void whether or not objection was taken at the time of its being so moved.

Hence, the appointments of all directors by passing one single resolution by Flora Construction Limited in its general meeting are void.

- (b)** The Companies Act, 1956 does not impose any share qualification on the directors. Therefore, unless the company's articles contain a provision to that effect, a director need not be a shareholder. However, the articles usually provide for a minimum share qualification. As per Regulation 66 of Table A, a director must hold at least one share in a company. Where a share qualification is fixed by the articles of a public company or a private company which is a subsidiary of a public company, Section 270 provides that:

- (i) each director must take his qualification shares within two months after his appointment;
- (ii) the nominal value of the qualification shares must not exceed ₹ 5,000.
- (iii) share warrants will not count for purposes of share qualification.

If a director fails to obtain his qualification shares within two months, he vacates office automatically on the expiry of two months after the date of his appointment. However, the subscribers to the Memorandum, as per provisions of the Act and/or Articles are deemed to be the first directors of the company. They need not hold qualification shares, unless the Articles so require.

Examining the above provisions of the Act, following shall be the answers to the questions asked:

- (i) Contention of members shall not be tenable, for the reasons stated above (i.e. provisions of the Act).
- (ii) His wife's holding of shares shall not be the qualification for the director. If the Articles are silent, the director need not hold any shares. Articles may provide that directors need not hold any qualification shares.
- (iii) If he is one of the subscribers to the memorandum, he need not hold the Qualification shares. However, as a subscriber to a Memorandum he has to take at least a share and that share entitles him to qualify as a director. Therefore, he can continue as a director in the given case.

5. (a) In accordance with the provisions of the Companies Act, 2013 as contained in section 176, acts done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles.

The Proviso to section 176 of the Companies Act, 2013, further provides that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown to the company to be invalid or to have terminated.

In view of the provision of section 176 of the Companies Act, 2013, the acts done by Mr. Swastik prior to 31st August, 2014 are to be treated as valid and binding on Bhanu Textiles Limited.

However in view of the Proviso to section 176 of the Companies Act, 2013, the acts done by Mr. Swastik after 31st August, 2014 shall be deemed to be invalid and not binding upon Bhanu Textiles Limited.

- (b) According to section 274(1)(g) of the Companies Act, 1956, a person who is already a director of a public company becomes disqualified for being appointed as director; if the concerned company:

- (i) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after 1st April, 1999; or
- (ii) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividends and such failure continues for one year or more.

Such a person is disqualified to act as a director of any other public company for a period of five years from the date on which the public company (in which he is a director) makes default as specified in the (A) or (B) above.

- (a) Here, Mr. Amit is a director of AB Ltd. and PQ Ltd. AB Ltd was regular in filing annual returns but did not file annual accounts for three years ended 31st March 2009, 2010 and 2011. The disqualification specified in 274(1)(g)(A) will not apply unless the company has committed defaults in respect of both the matters i.e. annual returns and annual accounts for three consecutive financial years. Hence, Section 274(1)(g) is not attracted in this case.

Now, AB Ltd. failed to pay interest on loans taken from a public financial institution from 1st April, 2011 onwards and also failed to repay matured deposits taken from public from 1st April, 2012 onwards. Failure to pay interest on loans taken from a public financial institution is not covered under section 274(1)(g)(B). But as AB Ltd has failed to repay its deposits on due date and the failure continues for more than one year, Mr. Amit is disqualified under section 274(1)(g)(B).

The disqualification would come into operation only at the time of appointment or reappointment of Mr. Amit as director of any other public company after the default has become effective. Till such time, Mr. Amit can continue to hold the office of director in all public companies in which he is a director. He need not vacate the office of director in AB Ltd as there is no such requirement either in section 274(1)(g) as the disqualification applies only to 'any other public company' or section 283 (Section 283 stipulates the circumstances under which the office of a director shall become vacant).

Mr. Amit cannot seek reappointment in PQ Ltd when he retires by rotation at the Annual General Meeting to be held in September, 2013.

- (b) In view of his disqualification u/s 274(1)(g)(B), Mr. Amit is not eligible to be appointed as additional director in XY Ltd. in June 2013 onwards.

6. (a) **Donation to Recognized Political Party:** According to section 182 of the Companies Act, 2013, notwithstanding anything contained in any other provision of this Act, no Government Company and no other company which has been in existence for less than three financial years shall contribute any amount or amounts directly or indirectly to any political party. Any other company may however, contribute any amount directly or indirectly to any political party, provided that the aggregate of the amount so contributed by the company in any financial year shall

not exceed 7.5% of its average net profits during the three immediately preceding financial years.

Thus, Galaxy Medicare Limited in the present case, can contribute to the recognized political party since it is not a Government Company and it is in existence for more than three financial years at the time of making the donation. Further, political donations can be made by Galaxy Medicare Limited only out of its profits.

Further, the political donation is required to be authorized by a resolution passed at a Board of Directors' meeting. The Company, in addition, shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.

If Galaxy Medicare Limited was registered in the year 2012, it cannot make political donations because the company has not been in existence for three financial years.

- (b) (i) As per section 202 of the Companies Act, 2013, the compensation payable to Mr. Fin will be shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term (1 year) or for 3 years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of 3 years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period.

In case of Mr. Fin, it will be remaining 1 year of his term as the term of the Managing Director is 5 years.

- (ii) Following are the cases in which no compensation is paid to the Managing Director in the situation of the lost of office:
- (a) where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;
 - (b) where the director resigns from his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;
 - (c) where the office of the director is vacated under sub-section (1) of section 167;
 - (d) where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director;
 - (e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the

affairs of the company or any subsidiary company or holding company thereof; and

- (f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

7. (a) According to the provisions of Section 180(1)(c) of the Companies Act, 2013, there are restrictions on the borrowing powers to be exercised by the Board of directors. According to the said section, the borrowings should not exceed the aggregate of the paid up capital and free reserves. While calculating the limit, the temporary loans obtained by the company from its bankers in the ordinary course of business will be excluded. If the borrowing exceeds the mentioned limit, the board of director can exercise their power only with the consent of the company by a special resolution. In the present case, the proposed borrowing of ₹ 15 crores from a nationalized bank is exceeding the limit mentioned i.e. aggregate of the share capital and reserves and surplus of ₹ 10 Crores. Thus, the above borrowing is beyond the powers of the Board of directors.

Thus, the management of Marbles Construction Limited, should take steps to convene the general meeting and pass a special resolution by the members in the meeting as stated in Section 180(1)(c) of the Companies Act, 2013. Then, the borrowing will be valid and binding on the company and its members.

- (b) Section 287 of the Companies Act, 1956, provides for the quorum for meeting. The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength (any fraction contained in the said one third being rounded off as one), or two directors, whichever is higher. Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength, the number of remaining directors, that is to say, the number of directors who are not interested present at the meeting being not less than two shall be the quorum during such time. In this case, the quorum is 4 (i.e. $\frac{1}{3}$ rd of 10 = 3 $\frac{1}{3}$ rounded off as 4).

Hence, the quorum was present at the time of commencement of meeting. As a rule, in the case of a meeting of the Board of Directors, the meeting cannot transact any business, unless a quorum is present at the time of transacting the business. It is not enough that a quorum was present at the commencement of the business. The quorum of the Board is required at every stage of the meeting and unless a quorum is present at every stage, the business transacted is void. (*Balakrishna V. Balu Subudhi AIR 1949 Pat 184*).

In the given situation four items were transacted with the quorum and thus they are valid. Other four items were transacted after 5 directors left the meeting resulting in the reduction of quorum as only 3 directors were present as against the required quorum of 4 directors. Hence, such four transactions are void.

8. (a) **Prohibition on insider trading of securities (Section 195 of the Companies Act, 2013)**

There was no provision under the Companies Act, 1956 for prohibition on insider trading of securities. A new section 195 of the Companies Act, 2013 which came

into force on 12th September, 2013 provides for prohibition on insider trading of securities. According to section 195 of the Companies Act, 2013:

- (i) No person including any director or key managerial personnel of a company shall enter into insider trading. But if any communication is required in the ordinary course of business or profession or employment or under any law, then the above prohibition does not apply.
 - (ii) "Insider trading" means—
 - (a) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or
 - (b) An act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person.
 - (iii) "price-sensitive information" means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.
 - (iv) If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.
- (b) According to Section 297(1) of the Companies Act, 1956, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm or a private company of which the director is a member or director, must not enter into contracts with company for the sale, purchase, or supply of goods, materials or services or for underwriting the subscription of any shares in, or debentures except with the consent of the Board of Directors.

According to the proviso to sub-section (1) in the case of a company having a paid-up capital of ₹ 1 crore or more, no such contract shall be entered into except with previous approval of the Central Government.

Section 297(3) provides that a director or persons connected with him may enter into a contract in the circumstances of urgent necessity without obtaining consent of the Board, even if the value of such a contract exceeds ₹ 5,000 in the aggregate, but in such a case the consent of the Board must be obtained at meeting within three months of the date of entering into the contract.

The consent of the Board is deemed to have been given only if it is accorded by a resolution of the Board and not otherwise, either before or within three months of the date of entering into the contract [sub-section (4)]

In the present case, Sweet Tea Limited wants to sell its tea by entering into contract with the following parties:

- (1) **Tea Bros, a partnership firm in which a director of Sweet Tea Limited is a partner:**

In this case, a resolution in the meeting of the Board of Directors is required to be passed before entering into a contract with Tea Bros. If due to urgency it is not possible to pass a Board resolution before entering into the contract, the requisite consent of the Board shall be obtained within three months of the date on which the contract was entered into. The director of Sweet Tea Limited who is also a partner in Tea Bros. must disclose his interest as per section 299.

- (2) **R & T Private Limited in which one of the directors of Sweet Tea Limited is a member:**

In this case also, a resolution in the meeting of the Board of Directors is required to be passed before entering into a contract with R & T Private Limited. If due to urgency it is not possible to pass a Board resolution before entering into the contract, the requisite consent of the Board shall be obtained within three months of the date on which the contract was entered into. The director of Sweet Tea Limited who is also a member in R & T Private Limited must disclose his interest as per section 299.

- (3) **Strong Tea Limited in which one of the directors of Sweet Tea Limited is a director holding 3% of the paid up capital of Strong Tea Limited:**

Section 297 does not cover cases of Public Limited Companies; hence the approval of Board of Directors will not be necessary. According to section 299(6), where a director or more than one directors whether alone or together holds more than 2% of the paid up capital in the other company then disclosure is required. Therefore, the interested directors must make disclosure of interest as required under section 299 as the director of Sweet Tea Limited is holding 3% of the paid up capital of Strong Tea Limited.

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

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

- (i) To enter, with such assistance as may be required, the place or places where such

books and papers are kept.

- (ii) To search that place or those places in the manner as provides in the Magistrate's order.
- (iii) To seize the books and papers as he considers necessary.

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

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

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

- 10. (a)** While sanctioning the scheme of amalgamation, the Court under section 394 of the Companies Act, 1956 may make provision for all or any of the following matters:
- (i) The transfer to the transferee company of the whole or any part of the undertaking property or liabilities of any transferor company.
 - (ii) The allotment by the transferee company of any shares, debenture etc, in that company which under the scheme are to be allotted by that company to any person.
 - (iii) The continuation of any legal proceedings by or against any transferor and transferee company.
 - (iv) The dissolution, without winding up of any transferor company.
 - (v) The provisions to be made for any persons who within such time and in such manner as the court directs, dissent from the scheme of amalgamation.
 - (vi) Such incidental matters as are necessary to secure that the amalgamation shall be fully and effectively carried out.

An order under section 394 of the Companies Act, 1956 transferring the property, rights and liabilities of one company to another does not automatically transfer contracts of personal service which are in their nature incapable of being transferred and no contract of service is thereby created between an employee of the transferor company on the one hand and the transferee company on the other.

In *Nokes vs. Doucaster Amalgamated collieries Ltd.* (1940 (3) all 2k 549) the House of Lords clearly stated that the workers are not furniture and their services can not be transferred without their consent. Thus, the contention of the workers of

Tigerwood Furniture Limited against the Woodply Furniture Limited is correct and justified.

(b) Hi-Tech Engineering Ltd. can demerge its cement business with Premier Cement Ltd. by obtaining the approval of Court as provided in section 394 of the Companies Act, 1956. For this purpose, Hi-Tech Engineering Ltd. is required to take the following steps:

- (1) Hi-Tech Engineering Ltd., known as “Transferor Company” for this purpose, has to prepare a scheme under which its properties and liabilities in respect of cement business will be transferred to Premier Cement Ltd., known as “Transferee Company” for this purpose. Such scheme must contain the consideration for transfer, known as “Exchange Ratio”.
- (2) An application under Section 391(1) of the said Act must be made to Court for an order convening meetings of creditors and/or members.
- (3) Notice(s) of the meeting(s) must be sent to members/creditors as per the direction of Court. Such notice must be accompanied by a statement under Section 393(1) of the said Act setting forth the terms of the compromise or arrangement and explaining its effect in general and in particular, the effect on the interests of Managerial Personnel.
- (4) To hold the said meetings and pass necessary resolution approving the scheme subject to the confirmation of Court. It may be noted that the resolution must be passed by a majority in number representing 3/4th in value of the members/creditors as required under Section 391(2) of the said Act.
- (5) Thereafter, Hi-Tech Engineering Ltd. is required to move to Court jointly with Premier Cement Ltd. for approval of the scheme disclosing all material facts relating to the Company (Proviso to section 391(2)). Court as required under section 394A shall give notice to the Central Government and shall take into consideration any representation received from Central Government before passing any order on the application made to it for approval of the scheme.
- (6) On receipt of Court’s order, Hi-Tech Engineering Ltd. is required to file a certified copy of the order with the Registrar of Companies (ROC) for registration within 30 days after making of the order by Court [(Section 394(3))]. This is very important since the non-filing of the order with ROC would make the approval order ineffective.
- (7) Lastly, to proceed to give effect to the scheme as approved by Court in the manner as directed by it.

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

- (i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is

less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.

- (ii) In the case of company not having share capital not less than one-fifth of the total number of its members.

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

As regards obtaining relief from CLB, continuous losses cannot, by itself, be regarded as oppression (*Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth*).

Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression. (*Thomas Veddon V.J. (v) Kuttanad Robber Co. Ltd.*).

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

12. (i) The case stated 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 of 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 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 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.

- 13. (a) Declaration of Solvency:** Chapter III of part VII of the Companies Act, 1956 deals with "Voluntary winding up" of companies and in this relation section 488 of the said Act provides for filing of "declaration of solvency" on the part of the directors of the company when there is proposal for voluntary winding up of the company.

The analysis of Section 488 of the Companies Act, 1956 discloses that a declaration of solvency contains the following features -

1. It is a declaration duly supported by an affidavit, verified by a competent authority.
2. A meeting of Board of Directors is required for the purpose.
3. The declaration is made by the directors or where there are more than two directors, by the majority of the directors that they have made full inquiry into the affairs of the company and
4. That they have formed opinion that the company has no debts or that if it will be able to pay its debt in full within a period not exceeding three years from the date of commencement of winding up as may be specified in the said declaration.
5. In order that the above declaration is valid, it should be made within five weeks immediately preceding the date of passing the resolution for winding up of the company and must be delivered to the Registrar before that date.
6. Further, the said declaration should be accompanied by a copy of the auditors report on the profit and loss account of the company for the period commencing from the date of the last audited accounts upto a date practicable immediately before the date of the declaration and a balance sheet on the last mentioned date and also a statement of company's assets and liabilities as on the date of the declaration made out in accordance with the requirements laid down by clause (2) of section 488 of the Companies Act, 1956.
7. Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ₹ 50,000, or with both.
8. If the company is wound-up in pursuance of a resolution passed within the period of five weeks after the making of the declaration but its debts are not

paid or provided for in full, within the period specified in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

- (b) **Overriding preferential payment:** As per Section 529A of the Companies Act, 1956, notwithstanding anything contained in other provisions of this Act or any other law for the time being in force in the winding-up of a company – (i) workmen's dues and (ii) debts due to secured creditors to the extent such debts rank, under clause (c) of the proviso to Sub-section (1) of Section 529, pari passu with such dues, shall be paid in priority to all other debts. These debts payable under (i) and (ii) above shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

As per the above provision, the dues of the workmen and debt due to the secured creditors are to be treated pari passu and have to be treated as prior to all other dues.

In view of the stated legal position in the problem, the contention of the Bank to pay the amount in full is not valid as the debts payable to the workmen and the secured creditors shall be paid in full, unless the realized assets are insufficient to meet the due debts, in which case they shall abate in equal proportions. Here, in the given problem, the realized assets of ABC Limited is ₹ 100 lakh and debts due to the secured creditor (Bank) is ₹ 200 lakh and the workmen's dues is ₹ 50 lacs.

In the light of the provisions of Section 529 and 529A, amount to be paid towards

$$\begin{aligned}
 \text{Workmen's dues} &= \frac{\text{Amt. realized} \times \text{Workmen's dues}}{\text{Workmen's dues} + \text{secured loan}} \\
 &= ₹ 100 \text{ lacs} \times \frac{₹ 50 \text{ lacs}}{₹ 50 \text{ lacs} + ₹ 200 \text{ lacs}} \\
 &= ₹ 100 \text{ lacs} \times \frac{₹ 50}{₹ 250} \\
 &= ₹ 100 \text{ lacs} \times \frac{1}{5} = ₹ 20 \text{ lacs}
 \end{aligned}$$

In view of the provisions of Section 529 and 529A, the contention of the bank that whole of ₹ 100 lacs realized from the sale of land, etc. shall be paid to the bank towards repayment of loan is not tenable, only a sum of ₹ 80 lacs shall be paid.

Thus, Official Liquidator will have to pay ₹ 20 Lacs to Workmen and ₹ 80 Lacs to the Bank.

14. (i) **Loan etc., to member:** As per section 581ZK of the Companies Act, 1956, the Board may provide financial assistance to the members of the producer company, subject to the provisions made in articles, by way of—
- (a) credit facility, to any member, in connection with the business of the Producer Company, for a period not exceeding six months;

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

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

Thus, according to the above provision, Western India Cotton Producer Company Limited can give loan to Mr. John, a member of the company for the Period of 1 year as the Act provides that Board may provide loan to any member repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan.

Whereas in respect of Mr. Smith, a Director, company may give the loan only after the approval by the members in general meeting.

- (ii) **Investment in other companies:** As per section 581ZL of the Companies Act, 1956, any producer company, either by itself or together with its subsidiaries, may invest, by way of subscription, purchase or otherwise, shares in any other company other than a producer company for an amount not exceeding thirty per cent of the aggregate of its paid-up capital and free reserves. Further, the provision provides that a producer company may, by special resolution passed in its general meeting and with prior approval of the Central Government, invest in excess of the limits.

Thus, according to the above provision, the Western India Cotton Producer Company Limited cannot invest an amount exceeding thirty per cent of the aggregate of its paid-up capital and free reserves i.e. ₹ 3,00,000/-(i.e., 30% of 10,00,000) in Superb Stores Limited. However, the company may invest in excess of the limits (more than 3,00,000) by special resolution passed in its general meeting and with prior approval of the Central Government.

15. (a) 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.
- (b) Please ensure following before attaching supporting documents with DIN application:
- ◆ Documents submitted are currently valid and not expired.
 - ◆ Documents issued by LIC may be enclosed as Date of Birth and Address proof.
 - ◆ Bank Statements, Utility Bills like telephone, electricity bill etc. furnished as residence proof are in the applicant's name only and not older than two months.
 - ◆ All supporting documents attached with form DIN-1 must be duly attested by an authorized person/ authority.
 - ◆ In case the director is illiterate, thumb impression should be certified from the concerned revenue authority (where the applicant resides) and then all the

documents should be notarized or attested or if applicant is not in a position to sign the application due to medical reasons and affixed thumb impression on the application then duly attested medical certificate from Government hospital is must with the application stating the reason of his / her ailment.

- (c) Details of a valid passport should be filled in form DIN-1 and a certified copy of same should be attached with DIN application. All supporting documents including photograph should be certified by the Indian Embassy or a notary in the home country of the applicant or by the Managing Director / CEO / Company Secretary of the company registered in India, in which applicant is a director. If a foreign director has a valid multiple-entry Indian visa or Person of Indian Origin card or Overseas Citizen of India card, then the attestation could also be done by Public Notary / Gazetted Officer in India or practicing CA / CS / CWA.

16. (a) (i) Display of name, etc., of foreign company

According to section 382 of the Companies Act, 2013, every foreign company shall—

- (1) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;
- (2) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill- heads and letter paper, and in all notices, and other official publications of the company; and
- (3) if the liability of the members of the company is limited, cause notice of that fact—
 - (A) to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
 - (B) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

(ii) Service on foreign company

According to section 383 of the Companies Act, 2013, any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 of the Companies Act,

2013, and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

(b) Under Section 603 of the Companies Act, 1956, the prospectus to be issued by an existing or intended Foreign Company in India must be dated and contain the following particulars:

- (a) the instrument constituting or defining the constitution of the company;
- (b) the enactment's or provisions under which the company was incorporated;
- (c) the address of the place in India where the said instrument, enactments etc. translation thereof in English if they are in some other foreign language, can be inspected;
- (d) the date on which and the country in which the company was incorporated; and
- (e) whether there is a place of business in India and if so, the address of its principal office.

The provision contained in (a), (b) and (c) above, shall not be applicable if the prospectus is issued more than 2 years after the company had become entitled to commence business.

17. Draft Board Resolution

“Resolved that consent of all the directors present at the meeting be and is hereby accorded to the appointment of Mr. Wahid, who is already the Managing Director of another public limited company, and fulfils the conditions as specified in Part I and II of Schedule XIII of the Companies Act, 1956, as the Managing Director of the company for a period of 5 years effective from 1st May, 2013 subject to approval by a resolution of shareholders in a general meeting and that Mr. Wahid may be paid remuneration as follows:

- (i) Salary of ₹ 1 Lakh per month
- (ii) Commission
- (iii) Perquisites: Free Housing, Medical reimbursement upto ₹ 10,000, Leave Travel Concession for the family, Club membership fee, Personal Accident Insurance of ₹ 10 Lakhs, Gratuity, Provident Fund etc.

Resolved further that in the event of loss or inadequacy of profits, 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 authorised to prepare and file with the Registrar of Companies necessary Return in respect of the above appointment”.

Sd/

Board of Directors

Morbani Woods Limited

(Note: Since in the given case Mr. Wahid fulfils all the conditions for appointment of Managing Director as specified in Part I and II of Schedule XIII, approval of Central Government is not required)

- 18. Orders of SEBI and Remedies:** Under section 11 of the SEBI Act, 1992, the basic duty of the SEBI is to protect the interests of investors in securities and regulate the securities market. Section 11A (1)(b) specifically empowers SEBI to prohibit any company from issuing prospectus, any offer document or advertisement soliciting money from the public for the issue of securities by general or special order.

According to section 11D, SEBI can issue, cease and desist order in respect of any listed company only if SEBI has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.

Aggrieved companies may appeal against orders of SEBI made under SEBI Act, 1992, rules or regulations to the Securities Appellate Tribunal (SAT) under section 15T of the said Act. Such appeal should be filed within 45 days from the date on which a copy of the order of SEBI is received by the company.

If the company is aggrieved by the order of SAT, further appeal against the order of SAT can be made to the Supreme Court within 60 days from the date of communication of the order of SAT on any question of law arising out of such order.

- 19. (i) Conditions for qualified institutions placement [Chapter VIII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009]:** Shyamgarh Chemicals Limited, a listed company may make qualified institutions placement if it satisfies the following conditions:
- (a) a special resolution approving the qualified institutions placement has been passed by its shareholders;
 - (b) the equity shares of the same class, which are proposed to be allotted through qualified institutions placement or pursuant to conversion or exchange of eligible securities offered through qualified institutions placement, have been listed on a recognised stock exchange having nationwide trading terminal for a period of at least one year prior to the date of issuance of notice to its shareholders for convening the meeting to pass the special resolution;
 - (c) it is in compliance with the requirement of minimum public shareholding specified in the Securities Contracts (Regulation) Rules, 1957;
 - (d) In the special resolution, it shall be, among other relevant matters, specified that the allotment is proposed to be made through qualified institutions placement and the relevant date referred in the regulations shall also be specified.
- (ii) Restrictions on amount raised:** The aggregate of the proposed qualified institutions placement and all previous qualified institutions placements made by the issuer in the same financial year shall not exceed five times the net worth of the issuer as per the audited balance sheet of the previous financial year.

In the instant case, the net worth of Shyamgarh Chemicals Limited is ₹ 120 crore. Therefore, the maximum amount that can be raised by the company under the proposed issue of shares is ₹ 600 crore (5*120).

(iii) Restrictions on Pricing of issue and transferability of shares:

Pricing of issue: The qualified institutions placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date.

Transferability of shares: The eligible securities allotted under qualified institutions placement shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

- 20. (a)** Mr. Yadav, a new investor, desirous of entering investments business in any Stock Exchange, can be advised on different terms commonly used in any Stock Exchange:

(i) Derivative [Section 2(ac) of the Securities Contracts (Regulation) Act, 1956]

Derivative includes –

- (1) a security derived from a debt instrument, share, loan whether secured or unsecured risk instrument or contract for differences or any other form of security;
- (2) a contract, which derives its value from the prices or index of prices, of underlying securities.

(ii) Option In Securities [Section 2(d) of the Securities Contracts (Regulation) Act, 1956] :

Option in Securities means a contract for the purchase or sale of a right to buy or sell or a right to buy and sell, securities in future, and includes a teji, a mandi, a teji mandi, a galli, a put, a call or a put and call securities.

(iii) Spot Delivery Contract [Section 2(i) of the Securities Contracts (Regulation) Act, 1956] :

Spot delivery contract means a contract which provides for:

- (1) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality.
- (2) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.

(b) According to Section 23C of the Securities Contracts (Regulation) Act, 1956, if any stock broker or sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by the Securities and Exchange Board of India or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by the Securities and Exchange Board of India or a recognised stock exchange, he or it shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

(i) **Composition of certain offences:** According to Section 23N of the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under Securities Contracts (Regulation) Act, 1956, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

Thus, in the instant case, offence committed by the stock broker is compoundable as he is punishable with fine only as provided under section 23C.

(ii) Yes, this offence can be compounded after institution of proceedings against the stock broker as it is clearly stated under Section 23N.

21. (a) As per section 12 of the Foreign Exchange Management Act, 1999

(1) The Reserve Bank may, at any time, cause an inspection to be made by any officer of the Reserve Bank specially authorized in writing by the Reserve Bank in this behalf, of the business of any authorized person as may appear to it to be necessary or expedient for the purpose of:

- (a) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;
- (b) obtaining any information or particulars which such authorized person has failed to furnish on being called upon to do so;
- (c) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

(2) It shall be the duty of every authorized person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under section 12 (1) such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such persons, company or firm as the said officer may require within such time and in such manner as the said officer may direct.

(b) **Residential Status under Section 2(v) of Foreign Exchange Management Act, 1999:** In accordance with the provisions of the Foreign Exchange Management Act,

1999, as contained in section 2(v), a person in order to qualify for the purpose of being treated as a 'Person Resident in India' in any financial year, must reside in India for a period of more than 182 days during the preceding financial year.

Mr. Bhattacharyya did not reside in India during the year 2013-2014 for more than 182 days and his residential status during the next year, i.e. 2014-2015 is non-resident even though he stayed in India from 1st April, 2014 as an employee. His residential status in 2013-2014 cannot be ascertained as his stay in India during the previous year 2012-2013 is not known.

22. (a) Abuse of Dominant position: The Competition commission while inquiring whether Paperwood limited enjoys a dominant position or not under Section 4 of the Competition Act, 2002 will take the following factors into account [Section 19(4) of the Competition Act, 2002]

- (i) Market-share of the enterprise
- (ii) size and resources of the enterprise
- (iii) size and importance of the competitors.
- (iv) economic power of the enterprise including commercial advantages over competitors.
- (v) vertical integration of the enterprises or sale or service net work of such enterprises.
- (vi) dependence of consumers on the enterprise.
- (vii) monopoly or dominant position whether acquired as result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise.
- (viii) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or services for consumers.
- (ix) countervailing buying power.
- (x) market structure and size of market.
- (xi) social obligations and social cost.
- (xii) relative advantage, by way of contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition.
- (xiii) any other factor which the commission may consider relevant for the inquiry.

(b) Removal of Member of Competition Commission: Section 11(2)(d) of the Competition Act, 2002 empowers the Central Government to remove, by an order, a member of the Competition Commission of India from his office if such member has acquired such financial interest as is likely to affect prejudicially his functions as a

member of the Competition Commission. However, provisions of Section 11(3) of the said Act put some restrictions on such power of the Central Government. According to this Section, the Central Government has to make a reference to the Supreme Court of India.

The Supreme Court shall hold an enquiry in accordance with the procedure formulated by it and then report that the member in question ought to be removed from his office on such ground.

Thus, the Central Government can remove a member of the Competition Commission of India only after following the procedure established by Section 11 of the Competition Act, 2002.

In view of the above the action of the Central Government is not in order and removal of Mr. Alexander is not valid.

23. (A) Illustrations: Illustrations form a part of the statute and considered to be of relevance and value in construing the text of the section. However, illustration can not have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section.

(B) Explanation: An Explanation may be added to include something or to exclude something from it. Explanation should normally be read as to harmonise with and clear up any ambiguity in the main section. It should be construed as to widen the ambit of the section.

(C) Preamble: The Preamble expresses the scope, object and purpose of the Act more comprehensively than the Long Title. The Preamble may recite the ground and the cause making a statute and the evil which is sought to be remedied by it.

Like the Long Title, the Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction, e.g., where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

(D) Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment: ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (*Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765*).

- 24. (a) Compensation to shareholders of the acquired bank:** Under section 36AE of the Banking Regulation Act, 1949, the Central Government has power to acquire the undertaking of Banking Companies. When a bank is acquired by the Central Government, a scheme for the acquired bank is made in consultation with the Reserve Bank of India.

Such Scheme also provides for compensation payable to the registered shareholders of the acquired Bank (Section 36AF).

Section 36AG of the Banking Regulation Act, 1949 states that compensation is paid to the registered shareholders in accordance with the principles provided in Schedule V to the said Act.

Any shareholder aggrieved with the amount of compensation may request the Central Government to refer the matter to Tribunal to be constituted under section 36AH of the Act. If the number of representation received is not less than one-fourth of the total number of shareholders holding not less than one-fourth of the paid-up share capital of the acquired Bank, the Central Government shall constitute a Tribunal for the purpose. Thus, such matters can be resolved through the Tribunal by the Central Government and the amount of compensation determined by the Tribunal is final and binding on all concerned parties.

- (b) Cancellation of Certificate of Registration under SRFAESI Act, 2002:**

The Reserve Bank of India may cancel a certificate of registration granted to a securitisation and reconstruction company for the reasons stated in Section 4 of SRFAESI Act, 2002.

RST Ltd., can prefer an appeal to the Central Government (Secretary, Ministry of Finance, Government of India) within a period of 30 days from the date on which order of cancellation was communicated to it. The Central Government must also give such company a reasonable opportunity of being heard before rejecting the appeal. If RST Ltd., is holding investments of qualified institutional buyers at the time of cancellation of certificate of registration, it shall be deemed to be a securitisation and reconstruction company until it repays the entire investments held by it, together with interest if any, within such period as may be specified by the Reserve Bank.

- 25. Offence of Money Laundering:** Section 2 (1)(y) of the Prevention of Money Laundering Act, 2002 defines the term "scheduled offence", which accordingly means –
- (i) the offences specified under Part A of the Schedule; or
 - (ii) the offences specified under Part B of the Schedule if the total value involved in

such offences is thirty lakh rupees or more.

(iii) The offences specified under Part C of the Schedule

These Schedule to the Act gives a list of all the above offences.

Punishment for the Offence of Money Laundering

Section 4 of the said act provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with:

- (i) Rigorous imprisonment for a term which shall not be less than three years, but may be extended to seven years, and
- (ii) Shall also be liable to fine.

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

IV Applicability of the Companies Act, 2013:

1. Auditing related sections notified in Sept, 2013 of the Companies Act, 2013 along with the clarifications notified by the Ministry of Corporate Affairs.
2. Notified sections of Chapter IX: Accounts of Companies and Chapter X: Audit and Auditors of the Companies Act, 2013 along with its relevant Rules.

Part II of the Supplementary study material in this regard has been hosted on the student portal, ICAI at the following link <http://220.227.161.86/33649bos23281.pdf>

Paper 4: Corporate and Allied Laws

Applicability of relevant Amendments / Circulars / Notifications / Regulations etc. for November, 2014, Examination: Refer Page No. 129