

PAPER – 4 : CORPORATE LAWS AND SECRETARIAL PRACTICE

Question Nos. 1, 2 and 3 are compulsory.

*Answer any **four** questions from the rest of the questions.*

Question 1

Answer any two of the following

- (a) *The Board of Directors of ABC Ltd. met thrice in the year 2004 and the 4th Meeting, though called, could not be held for want of quorum.*

Examine with reference to the relevant provisions of the Companies Act, 1956, the following:

- (i) *Whether any provisions of the Companies Act, 1956 have been contravened?*
 - (ii) *Is a Director bound to attend the Board Meetings and when his frequent absence from the Board Meeting may be excused? (5 Marks)*
- (b) *Describe the provisions of the Securities Contracts (Regulation) Act, 1956 regarding the powers of the Central Government to supersede the Governing Body of a recognized Stock Exchange and the consequences of such supersession. (5 Marks)*
- (c) (i) *Delhi Stock Exchange wants to establish additional trading floor. Advise.*
- (ii) *Complaints of unethical practices have been received against members of a recognized Stock Exchange by the Government. Examine whether the government has any power to suspend the business of such a recognized Stock Exchange. (5 Marks)*

Answer

- (a) (i) As per Section 285 of the Companies Act, 1956, a company must hold a meeting of its Board of Directors at least once in every three calendar months and there should be at least four directors' meeting every year. However, the Central Government may by notification in the official Gazette, direct 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. But in the terms of Section 288(2), a company shall not be deemed to have contravened the provisions of Section 285 where the meeting had been called but could not be held for want of a quorum.
- (ii) Though a director is not so bound to attend the Board meetings, nonetheless, he will be guilty of breach of duty if he fails to attend the Board meetings with reasonable regularity without sufficient cause being shown for his non-attendance. Willful non-attendance on his part may give rise to his liability on ground of negligence if it is patently prejudicial either to the company or to the general body of shareholders. Fairly frequent absence from the Board meetings may, however, be excused if the entire control is exercised by a single director or if the Board is pretty large in number (*Re Denhom & Co. D.25 ch. D. 752 Marquis of Bute's Case (1892)2 Ch. 100*). The fewer the directors, the more onerous is the duty to attend.

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

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

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

- (i) The members of the governing body of such Stock Exchange ceases to hold office as such members on and from the date of notification.
 - (ii) The person or persons appointed by the Central Government may exercise and perform all the powers and duties of the governing body which has been so superseded.
 - (iii) The property of the Stock Exchange as deemed necessary and so specified in writing by such person or persons to carry on the business of the Stock Exchange shall vest in such person or persons.
- (c) (i) According to Section 13A of Securities Contracts (Regulation) Act, 1956, a Stock Exchange may establish additional trading floor with the prior approval of the Securities Exchange Board of India with the terms and conditions stipulated by the said Board. 'Additional Trading Floor' means a trading facility offered by a recognized stock exchange outside its area of operation to enable the investors to buy and sell securities through such trading floor under the regulatory frame work of that Stock-Exchange.
- (ii) Section 12 of the Securities Contracts (Regulation) Act, 1956 deals with the powers of the Central Government to suspend business of recognized Stock Exchange. Central Government, if it deems fit, is vested with power to suspend business for a period not exceeding 7 days by notification in Gazette. Central Government also have power to extend this period by a like notification. However, such power can be exercised by the Central Government, if it is of opinion that an emergency has arisen and it is expedient so to do.

Question 2

Answer any two of the following:

- (a) Explain the meaning of "Capital Account Transaction" under the Foreign Exchange Management Act, 1999. State whether there are any restrictions in respect of the following transactions:
- (i) Drawal of Foreign Exchange for payments due on account of amortisation of loans in ordinary course of business.
 - (ii) Purchase by a person resident outside India of shares of a company in India engaged in plantation activities. (7 Marks)
- (b) TKM Exporters of New Delhi are engaged in Export Business. It made certain exports, but failed to realize and repatriate to India the foreign exchange due on its exports. The Adjudicating Authority imposed a penalty under the provisions of Foreign Exchange Management Act, 1999 (FEMA). Being aggrieved by this penalty, the said exporter seeks your advice as to the authority to which appeal can be made and the time limit for making such appeals. You are required to advise on the matter. (7 Marks)
- (c) (i) In a proceeding before the Competition Commission of India involving two pharmaceutical companies, the plaintiff requested the presiding officer to call upon the services of experts from the pharmaceutical sector to determine the truth of the allegations leveled by it against the respondent. The respondent opposed the request on the ground that such action can not be taken by the Competition Commission. You are required to state with reference to the provisions of the Competition Act, 2002, whether the contention of the respondent is tenable.
- (ii) The Central Government has formed an opinion that Mr. CBM (a member of the Competition Commission of India) has acquired such financial interest that it may affect prejudicially his functions as a member of the Competition Commission and it wants to remove him from his office. You are required to state with reference to the provisions of the Competition Act, 2002, whether the Central Government can do so and if yes, how? (7 Marks)

Answer

- (a) As per provisions of section 2(e) of the Foreign Exchange Management Act, 1999 (FEMA) "Capital Account Transaction" means a transaction which alters (a) the assets and liabilities, including the contingent liabilities, outside India of persons resident in India or (b) the assets and liabilities in India of persons resident outside India.

It also includes the following as stated in section 6(3) of FEMA:

- (i) Transfer or issue of any foreign security by a person resident in India.
- (ii) Transfer or issue of any security by a person resident outside India.
- (iii) Transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India.

- (iv) Any borrowing or lending in foreign exchange in whatever form or by whatever name called.
- (v) Any borrowing or lending in India rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India.
- (vi) Deposits between persons resident in India and persons resident outside India.
- (vii) Export, import or holding of currency or currency notes.
- (viii) Transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India.
- (ix) Acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India.
- (x) Giving a guarantee or surety in respect of any debt, obligation or other liability incurred (a) by a person resident in India and owed to a person resident outside India or (b) by a person resident outside India.

(i) Amortisation of Loans:

Under provisions of FEMA, 1999 subject to Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 as amended by Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2004 all capital account transactions are prohibited unless permitted by proviso to section 6(2) of FEMA. The proviso specifically permits drawal of foreign exchange for payments due on account of amortisation of loans in ordinary course of business. Hence, there is no restriction in FEMA in this regard.

(ii) Purchase of Shares of Company engaged in Plantation activities:

According to Section 6(2) of FEMA, 1999 the Reserve Bank of India is empowered to specify in consultation with the Central Government, the classes of capital account transactions which are permissible and the limits upto which the foreign exchange shall be admissible for such transactions. Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 completely prohibits certain capital account transactions. One such transaction is foreign investment in India in any company, firm or proprietary concern engaged in or proposed to be engaged in agriculture or plantation activities. Hence, purchase by a person resident outside India of shares of a company in India engaged in plantation activities is not permissible.

- (b)** Sections 17 and 19 of FEMA, 1999 provide for appeals against orders of Adjudicating Authority. If Adjudicating Authority is Assistant Director of the Enforcement or Deputy Director of Enforcement, appeal will lie to Special Director (Appeals). Further appeal shall lie with Appellate Tribunal for Foreign Exchange. However, if the Adjudicating Authority is senior to the Assistant Director of Enforcement or Deputy Director of Enforcement, then the appeal shall lie directly to the Appellate Tribunal.

Appeal to Special Director (Appeals)

Appeal against order of Assistant Director of Enforcement or Deputy Director of Enforcement can be filed with Special Director (Appeals) under Section 17 within 45 days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person. The Special Director (Appeals) can condone the delay in filing the appeal if he is satisfied that there were sufficient cause for not filing the appeal within the stipulated time. Special Director (Appeals) will hear the parties and then pass his order. Copy of the order shall be sent to the concerned parties and the Adjudicating Authority.

Appeal to Appellate Tribunal

Appeal against the order of Adjudicating Authority being senior to Assistant Director of Enforcement or Deputy Director of Enforcement or against the order of Special Director (Appeals) can be made to the Appellate Tribunal for Foreign Exchange under section 19 of FEMA within 45 days from the date on which the copy of the order made by such Adjudicating Authority or Special Director (Appeals) is received by the aggrieved person. In this case also, the delay can be condoned by the Appellate Tribunal. In case of an appeal against the order imposing penalty, the appellant has to deposit the amount of such penalty with the authority prescribed by the Central Government. However, the Appellate Tribunal may waive such deposit to mitigate the likely hardship that may be caused to the appellant. After hearing of the appeal, the Appellate Tribunal shall pass a reasoned order.

It may be noted that the Tribunal is the final fact finding authority and no appeal lies against the facts determined by the Tribunal.

- (c) (i) As per provisions of Section 36(4) of the Competition Act, 2002, the Competition Commission may call upon such experts from the fields of economics, commerce, accountancy, international trade or other disciplines as it deems necessary, to assist the Commission in the conduct of any enquiry or proceeding before it. As per Regulation 54 of the Competition Commission (General) Regulations, 2004 made by the Commission under Section 64 of the Competition Act, 2002, it may draw up a panel of such experts.

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

- (ii) Section 11(2) of the Competition Act, 2002 empower the Central Government to remove, by an order, a member of the Competition Commission of India from his office if such member has acquired such financial interest as is likely to affect prejudicially his functions as a Member of the Competition Commission. However, provisions of Section 11(3) of the said Act puts some restrictions on such powers of the Central Government. According to this section, in case as stated in the question, the Central Government wants to remove a member of the Competition Commission

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

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

Question 3

Answer any two of the following:

(a) *An investor has complained to SEBI that he has not received the payment due to him from the stock-broker registered with Calcutta Stock Exchange Association Ltd. The complainant has requested SEBI to take appropriate action against the stock-broker. You are required to state with reference to the provisions of Securities and Exchange Board of India Act, 1992 the answer to the following:*

- (i) *What action SEBI can take against the stock-broker on the complaint as stated above?*
- (ii) *What is the procedure to be adopted and what are the factors that will be taken into account while taking such action?* (8 Marks)

(b) *Following information is available from the records of Star Chemicals & Engineering Ltd.:*

- (i) *The Company is a closely held unlisted Company.*
- (ii) *The paid up share capital of the Company since 1st April, 1999 is Rs.3.00 crores and its net worth as at 31st March, 2005 was Rs.5.00 crores as per audited Balance Sheet.*
- (iii) *The Net Tangible Assets of the Company as per last 3 (three) audited Balance Sheet as at 31st March, 2003, 2004 and 2005 were Rs.4.00 crores, 4.50 crores and 5.00 crores respectively, out of which monetary assets were less than Rs.50 lacs in each of three years.*
- (iv) *The Company was incorporated in 1996 and commenced its business on 1st April, 1996 and since then it has earned good profits and it has not incurred any loss in any year in past.*
- (v) *The Company has not declared any dividend so far, but according to the profits earned so far, the management could have declared the dividend in each of the last five years.*
- (vi) *The name of the Company was changed from Star Engineering Ltd. to its present name with effect from 1st October, 2004.*

The Company wants to make a public issue of shares to raise Rs.20.00 crores by issuing equity shares at premium. For the purpose of including the information in the prospectus, the company has prepared its accounts for 12 months ended 30th September, 2005 showing segment-wise revenue, which reveals that revenue from

Chemical segment is more than the revenue from Engineering segment.

You are required to state the relevant guidelines issued by SEBI and your conclusion whether the company can make the desired issue of equity shares based on the facts stated above. (8 Marks)

- (c) (i) *Explain the rules relating to interpretation of Statutes, when the terms "notwithstanding" and "Subject to" are used in any provision of an Act.*
- (ii) *State the effect of the words "notwithstanding anything contained in this Act" used in Section 408 of the Companies Act, 1956, which vests certain powers in the Central Government to prevent oppression or mismanagement* (8 Marks)

Answer

- (a) A stock broker registered with any recognized stock exchange is governed by the provisions of Securities and Exchange Board of India Act, 1992. Accordingly, he exposes himself to certain penalties under Section 15F of the said Act in certain circumstances. According to Section 15F(b) of the said Act, if a registered stock broker fails to make payment of the amount due to the investor in the manner or within the time specified in the relevant regulations, he shall be liable for a penalty of one lac rupees for each day during which the default continues or one crore rupees whichever is less.

For the purpose of adjudging any default under Section 15F of Securities and Exchange Board Act, 1992, as per Section 15-I of the said Act, SEBI shall appoint any of its officers not below the rank of Division Chief to be an adjudicating officer for holding the enquiry in the prescribed manner after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

Section 15J of the said Act enumerates following factors that shall have to be taken into account by the adjudicating officer while adjudging the quantum of penalty.

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.
 - (b) the amount of loss to an investor or group of investors as a result of the default.
 - (c) the repetitive nature of the default.
- (b) The relevant guidelines issued by SEBI in respect of issue of shares by an unlisted company are laid down in Chapter II of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 as amended vide SEBI/CFD/DIL/DIP/Circular No.11 dated August 14, 2003.

According to Para 2.2.1 of the said Guidelines, an unlisted company can make an initial public offer of equity shares if the following conditions are fulfilled:

- (a) The company has net tangible assets of at least Rs.3 crores in each of the preceding 3 full years (of 12 months each), of which not more than 50% is held in monetary assets.

Provided that if more than 50% of the net tangible assets are held in monetary

assets, the company has made firm commitments to deploy such excess monetary assets in its business/project;

- (b) The company has a track record of distributable profits in terms of Section 205 of the Companies Act, 1956, for at least three (3) out of immediately preceding five (5) years;

Provide further that extraordinary items shall not be considered for calculating distributable profits in terms of Section 205 of the Companies Act, 1956.

- (c) The company has a net worth of at least Rs.1 crore in each of the preceding 3 full years (of 12 months each);
- (d) In case the company has changed its name within the last one year, at least 50% of the revenue for the preceding 1 full year is earned by the company from the activity suggested by the new name; and
- (e) The aggregate of the proposed issue and all previous issues made in the same financial year in terms of size (i.e., offer through offer document + firm allotment + promoters' contribution through the offer document), does not exceed five (5) times its pre-issue net worth as per the audited balance sheet of the last financial year)

In the case given in the question, all the conditions are fulfilled. The Company has net tangible assets exceeding Rs.3.00 crores in each of the preceding three years and it has monetary assets which are less than 50% thereof. The company has a track record of having distributable profit in last three out of last five years. The declaration of dividend is not essential. The company has a net worth of more than Rs.1 crore in each of the preceding three full years. The company has changed its name by including the word "Chemicals" therein and as per the information provided, the revenue earned by the company from this activity is more than 50% of the total revenue earned by it during the preceding one full year of 12 months. Finally, the issue size is Rs.20.00 crores, which is less than five times its pre-issue net worth of Rs.5.00 crores. The company is free to price their equity shares. Hence, the company can raise Rs.20.00 crores through public issue of equity shares at a premium.

- (c) (i) The term "notwithstanding" used along with the words "anything contained" in an Act characterises the non obstante clause. It is used in a provision of an Act when the intention of the legislature is to give an over-riding effect to that provision over other provisions of that Act and/or over provisions of other Acts as may be specified later in such provision. If there is any inconsistency or departure between the non obstante clause and other provisions, then the provisions as contained in the non obstante clause shall prevail. [*K. Parasuramaiah Vs. Pakari Lakshman AIR (1965) AP 220*].

As against the above non obstante clause, the term "subject to" is used in a provision of an Act to convey the intention of the legislature that the particular provision is yielding place to another provision or provisions to which is made "subject to". Thus, it can be concluded that the effect of non obstante clause (i.e., not withstanding") is the opposite to a provision or provisions which includes the

term "subject to".

- (ii) Section 408 of the Companies Act, 1956 starts with the words "notwithstanding anything contained in this Act". This is a non obstante clause which vests overriding powers in the Central Government to nominate directors to prevent mismanagement or oppression. [*Oriental Industrial Investment Corporation Ltd. Vs. Union of India* (1981) 52 Comp. Cas. 487, 493]. This expression indicates that the appointment of the directors under this section is not to be controlled by other provisions of the Companies Act, 1956 such as maximum number or other proportion, if any fixed by the said Act. Further, the directors so appointed are also not liable to be removed by the company at general meeting under the provisions of section 284 of the Companies Act, 1956.

Question 4

- (a) The last three years' Balance Sheet of PTL Ltd., contains the following information and figures:

	As at 31.03.2003	As at 31.03.2004	As at 31.03.2005
	Rs.	Rs.	Rs.
<i>Paid up capital</i>	50,00,000	50,00,000	75,00,000
<i>General Reserve</i>	40,00,000	42,50,000	50,00,000
<i>Credit Balance in Profit & Loss Account</i>	5,00,000	7,50,000	10,00,000
<i>Debenture Redemption Reserve</i>	15,00,000	20,00,000	25,00,000
<i>Secured Loans</i>	10,00,000	15,00,000	30,00,000

On going through other records of the Company, the following is also determined:

<i>Net Profit for the year (as calculated in accordance with the provisions of Section 349 & 350 of the Companies Act, 1956</i>	12,50,000	19,00,000	34,50,000
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In the ensuing Board Meeting scheduled to be held on 5th November, 2005, among other items of agenda, following items are also appearing:

- (i) To decide about borrowing from Financial institutions on long-term basis.
(ii) To decide about contributions to be made to Charitable funds.

Based on above information, you are required to find out as per the provisions of the Companies Act, 1956, the amount upto which the Board can borrow from Financial

institution and the amount upto which the Board of Directors can contribute to Charitable funds during the financial year 2005-06 without seeking the approval in general meeting.
(8 Marks)

- (b) *Examine the validity of the following with reference to the relevant provisions of the Companies Act, 1956 and/or decided case laws:*
- (i) *Mr. G, a Director of Sam Limited was interested in a contract to be entered into by the company. The Articles of Association of Sam Limited contained a clause, which prohibited the directors from voting on the resolution in respect of any contract in which he is interested. The matter in respect of the said contract was put up for approval of the shareholders in a general meeting. The general meeting was attended by Mr. G and he also voted on the resolution. Mr. G, claims that he has a right to vote on the resolution in the general meeting.*
 - (ii) *The Articles of Association of Big Limited provide that a meeting of the Board of Directors of the company shall be held at 11.00 a.m. on the last day of every quarter ending 31st March, 30th June, 30th September, and 31st December. Relying on which a clause in the articles, the company did not send notices to the directors in respect of the board meeting held on 30th September, 2005. Some of the directors have questioned the validity of the board meeting on the ground that individual notices have not been sent to the directors.*
(7 Marks)

Answer

- (a) (i) **Borrowing from Financial Institutions:** As per Section 293(1)(d) of the Companies Act, 1956, the Board of Directors of a public company or a private company which is a subsidiary of a public company, without obtaining the approval of shareholders in a general meeting, can borrow the funds including funds already borrowed upto an amount which does not exceed the aggregate of paid up capital of the company and its free reserves. Such borrowing shall not include temporary loans obtained from the company's bankers in ordinary course of business. Here, free reserves do not include the reserves set apart for specific purpose.

Since the decision to borrow is to be taken in a meeting to be held on 5th November, 2005, the figures relevant for this purpose are the figures as per the Balance Sheet as at 31.03.2005. According to the above provisions, the Board of Directors of PTL Ltd. can borrow, without obtaining approval of the shareholders in a general meeting, upto an amount calculated as follows:

	Rs.
Paid up Capital	7,500,000
General Reserve (being free reserve)	5,000,000
Credit Balance in Profit & Loss Account (to be treated as free reserve)	1,000,000

Debenture Redemption Reserve (This reserve is not to be considered since it is kept apart for specific purpose of debenture redemption)	----
Aggregate of paid up capital and free reserve	13,500,000
Total borrowing power of the Board of Directors of the company, i.e, 100% of the aggregate of paid up capital and free reserves	13,500,000
Less: Amount already borrowed as secured loans	3,000,000
Amount upto which the Board of Directors can further borrow without the approval of shareholders in a general meeting.	<u>10,500,000</u>

- (ii) **Contribution to Charitable Funds:** As per Section 293(1)(e) of the Companies Act, 1956, the Board of Directors of a public company or a private company which is a subsidiary of a public company, without obtaining the approval of shareholders in a general meeting, can make contributions to charitable and other funds not directly related to the business of the company or the welfare of its employees upto an amount which, in a financial year, does not exceed Rs.50,000/- or five per cent of its average net profits as determined in accordance with the provisions of Sections 349 and 350 of the Companies Act, 1956 during the three financial years immediately preceding, whichever is greater.

According to the above provisions, the Board of Directors of the PTL Ltd. can make contributions to charitable funds, without obtaining approval of the shareholders in a general meeting, upto an amount calculated as follows:

Net Profit for the year (as calculated in accordance with the provisions of Sections 349 & 350 of the Companies Act, 1956:

	Rs.
For the financial year ended 31.12.2003	12,50,000
For the financial year ended 31.12.2004	19,00,000
For the financial year ended 31.12.2005	<u>34,50,000</u>
TOTAL:	<u>66,00,000</u>
Average of net profits during three preceding financial years	<u>22,00,000</u>
Five per cent thereof	<u>1,10,000</u>

Since this amount is higher than Rs.50,000/-, the Board of Directors of PTL Ltd. can make contribution to charitable funds upto Rs.1,10,000/- during the financial year 2005-06 without obtaining the approval of shareholders in a general meeting.

- (b) (i) When a director exercises his voting right as a shareholder, he is free to vote in his own best interests like any other shareholder. An article in the articles of association prohibiting a director from voting on a resolution in respect of a contract in which he is interested does not debar him from voting thereon as a shareholder in

a general meeting [*East Pant Du United Lead Mining Co. Ltd. vs. Merry Weather* (13 WR 216)]. A shareholder may vote as he pleases even when his interests are different from or opposed to those of the company. Shareholders are not trustees for the company or for one another. [*North-West Transportation Co. vs. Beaty* (1887) 12 APP CAS 569 (PC)]. The restriction in the article pertaining to voting applies only to the board meetings and not to the general meetings.

In view of the above legal pronouncements, there cannot be any restriction on the voting right of a director in a general meeting where he is voting as a shareholder. Hence the contention of Mr. G is correct.

- (ii) If the articles of association of Big Limited provides that a meeting of the board directors shall be held on the last day of each quarter, it is not necessary that separate notices are required to be served on the directors. It was held in the case of *Arunachalam Chettiar vs. Kaleswarar Mills Ltd.* [(1956) 26 Comp. Cas. 431] that where the articles of the company provide that there will be a meeting of the board of directors on the first Saturday of every month, there will be no necessity of service of notice to individual director and such clause in the articles of association is sufficient compliance of section 286(1) of the Companies Act, 1956. In view of the said judgement, the clause in the article is sufficient compliance of the requirement of sending the notice for a board meeting and the contention of some of the directors is not legally valid. However, as a good secretarial practice, notice for every board meeting should be sent to all the directors eligible to receive the notice.

Question 5

- (a) *A group of shareholders has approached you for advice regarding the affairs of LPM Paper Mills Ltd. According to them, the management of the company is not carrying out its functions in accordance with the prudent commercial practice and if the affairs of the company are allowed to run in future in the same manner, the company's solvency would be in danger. They want that a Special Audit be conducted to find out the actual nature of the transactions.*
- (i) *You are required to state with reference to the provisions of the Companies Act, 1956, as to when a special audit can be directed and by whom.*
- (ii) *Draft an application to be submitted to the appropriate authority in this respect.*
(8 Marks)
- (b) (i) *State the provisions of the Companies Act, 1956 regarding the appointment of auditors in the following cases:*
- (a) *A Company, whose Annual General Meeting was held on 30th September, 2005, but it failed to appoint the auditor.*
- (b) *A Company, whose financial year shall end on 31st December, 2005 and whose auditor (appointed in last Annual General Meeting held on 30th March, 2005) had died on 15th October, 2005.*

- (ii) *State the considerations under the Companies Act, 1956 upon which the Central Government can prohibit the appointment of Sole Selling Agents in certain cases.*
(7 Marks)

Answer

- (a) (i) **Provisions regarding Special Audit:** Section 233A of the Companies Act, 1956 deals with the matter relating to Special Audit. The special audit can be ordered by Central Government under certain circumstances. The circumstances are enumerated below:

If the Central Government is of the opinion:

- (i) that the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices; or
- (ii) that any company is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains; or
- (iii) that the financial position of any company is such as to endanger its solvency.

Thus, the group of shareholders can make a complaint to the Central Government requesting for conducting the special audit. If the Central Government is satisfied that there exist sufficient reasons, it may order a special audit to be carried out by a Chartered Accountant who may or may not be company's statutory auditor or who may or may not be in practice.

- (ii) DRAFT APPLICATION

Dated_____

To,
The Secretary,
Department of Company Affairs,
Ministry of Company Affairs,
Government of India,
(Address)
New Delhi

Sir,

We, the undersigned, the shareholders of LPM Paper Mills Ltd. would like to bring to your kind notice that for a long time the affairs of the said company are not being managed in accordance with sound business principles and prudent commercial practices.

We are of the view that certain expenditures which are being incurred by the company are not related to the business of the company and the company is not getting any benefit out of such expenses. Moreover, we have the apprehension that there are certain business transactions which are being entered into by the directors

with the concerns which are owned by the relatives of the Directors and the prices charged for such transaction are not comparable with the prices charged by other parties for similar transactions. (Students may state any other circumstances also).

If such a state of affairs is allowed to be carried on for long, the financial position of the company will reach a stage where it will endanger its solvency.

We feel that the modus operandi of the transaction is such that it may be difficult for the regular statutory auditor to detect them in course of normal audit.

It is, therefore, prayed that the Central Government be pleased to appoint, pursuant to Section 233A of the Companies Act, 1956, a Special Auditor to properly audit the accounts of the Company and find the real nature of the transactions and determine the losses so far sustained and being sustained by the company on this account.

Yours faithfully,

- 1.
- 2.
- 3.
- 4.
- 5.....

Shareholder

- (b) (i) (a) The appointment of auditors in the case of company's failure to appoint an auditor at its Annual General Meeting is dealt with by Sections 224(3) and (4) of the Companies Act, 1956. The said sections state that where at an annual general meeting, no auditors are appointed or re-appointed, the company shall, within seven days of such non-appointment give notice to the Central Government and the Central Government may appoint a person to be the auditor of the company to fill the vacancy caused by such non-appointment. It may be noted that now these powers are exercised by the Regional Director by delegation.
- (b) The situation as stated in the question is covered by the provisions of Section 224(6) of the Companies Act, 1956. Clause (a) of the said section states that the Board of Directors may fill any casual vacancy in the office of an auditor. Accordingly, in the case of death of the auditor, the Board of Directors of the company can appoint the auditor. This is called the filling up of the casual vacancy. However, as per clause (b) of the said section any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.
- (ii) As per section 294AA of the Companies Act, 1956 where the Central Government is of opinion that the demand for goods of any category, to be specified by that Government, is substantially in excess of the production or supply of such goods and that the services of sole selling agents will not be necessary to create a market for such goods, the Central Government may, by notification in the Official Gazette,

declare that sole selling agents shall not be appointed by a company for the sale of such goods for such period as may be specified in the declaration.

In view of the provisions of the said section, the Central Government has to take following two considerations into account while prohibiting the appointment of sole selling agents:

- (1) Whether the demand for goods of any category is in excess of the production or supply; and
- (2) that the services of sole selling agents will not be necessary to create a market for such goods.

Question 6

- (a) (i) *The existing Inter-state Cooperative Society seeks your advice regarding the papers to be submitted to the Registrar of Companies for its registration as a Producer Company under the provisions of the Companies Act, 1956. You are required to prepare a list of such papers.*
- (ii) *A group of individuals eligible to form a Producer Company within the meaning of the Companies Act, 1956 has entrusted you with the job of preparing the Memorandum of Association of the proposed Producer Company. You are required to state the matters, which are required to be included in such Memorandum of Association. (8 Marks)*
- (b) *Some small shareholders of TRG Ltd., a company listed with Mumbai Stock Exchange, want to appoint Mr. Raj, who is holding 1,000 equity shares of Rs.10 each of the Company as a Director as their representative on the Board of Directors of the said company. You are required to state the relevant provisions of the Companies Act, 1956 in respect of such proposal to appoint Mr. Raj as a Small Shareholders' Director.*

Also state whether Mr. Raj can be appointed as a Small Shareholders' Director if he is already a Small Shareholders' Director in two other companies. (7 Marks)

Answer

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

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

- (a) a copy of the special resolution, of not less than two-third of total members of Inter-State Co-operative Society, for its incorporation as a Producer Company under the Companies Act:
- (b) a statement showing:
 - (i) Names and addresses or the occupation of the directors and Chief Executive, if any, by whatever name called, of such inter-State Co-

operative Society, and

- (ii) list of members of such Inter-State Co-operative Society;
 - (c) a statement indicating that the Inter-State Co-operative Society is engaged in any one or more of the objects specified in Section 581B of the Companies Act, 1956;
 - (d) a declaration by two or more directors of the Inter-state co-operative society certifying that particulars given in the above statements are correct.
- (ii) As per Section 581F of the Companies Act, 1956, the Memorandum of Association of a Producer Company has to state the following:
- (a) the name of the company with “Producer Company Limited” as the last words of the name of such Company;
 - (b) the State in which the registered office of the Producer Company is to situate;
 - (c) the main objects of the Producer Company confirming to the objects specified in Section 581B of the Companies Act, 1956;
 - (d) the names and addresses of the persons who have subscribed to the memorandum of Association;
 - (e) the amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount;
 - (f) the names, addresses and occupations of the subscribers being producers, who shall act as the first directors in accordance with section 581J(2) of the Companies Act, 1956;
 - (g) that the liability of its members is limited;
 - (h) opposite to the subscriber’s name the number of shares each subscriber takes (Each subscriber must take at least one share);
 - (i) in case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.
- (b) The provisions of Section 252 of the Companies Act, 1956, and the Companies (Appointment of Small Shareholders’ Director) Rules, 2001 in respect of appointment of Small Shareholders’ Director are as follows:
- (1) The provisions of appointment of Small Shareholders’ Director are applicable to public companies having paid-up share capital of Rs.5.00 crores or more and having 1000 or more small shareholders. In case, TRG Ltd. is fulfilling both these conditions, then only its shareholders shall be eligible to proceed in the direction of appointing Mr. Raj as a Small Shareholders’ Director.
 - (2) Small Shareholder for this purpose means a shareholder holding shares of nominal value of Rs.20,000 or less.
 - (3) Small Shareholders who intend to propose Mr. Raj as a Small Shareholders’

Director have to leave a notice of their intention with T.R.G. Ltd. at least 14 days before the meeting and such notice has to be signed by at least 100 small shareholders.

- (4) According to the rules, the person whose name is to be proposed for the post of Small Shareholders' Director should himself be a small shareholder. Since Mr. Raj is holding shares of nominal value of Rs.10,000 only, which is less than Rs.20,000, he is eligible to be nominated as such.
- (5) The said notice shall contain the name, address, number of shares held, folio number in case of shares being held in physical form, Depository Participant ID No. and Shareholder's ID No. in case of shares being held in dematerialized form of Mr. Raj, whose name is to be proposed as a Small Shareholders' Director.
- (6) Before the meeting, Mr. Raj has to sign and file with TRG Ltd., his consent in writing to act as a director.
- (7) Since TRG Ltd. is a company which is listed with Mumbai Stock Exchange, it shall elect Small Shareholders' nominee through the postal ballot.
- (8) On scrutinising the postal ballot, if Mr. Raj secures the requisite number of votes, he will be elected as a director for a term of 3 years and on expiry of the term shall be eligible to be reappointed if small shareholders so wish at that time. However, he need not have to retire by rotation.
- (9) Mr. Raj shall be treated as director for all other purposes except for appointment as whole time director or managing director.

Rule 7 of the Companies (Appointment of the Small Shareholders' Director) Rules, 2001 puts a restriction on number of directorships to be held by a person as Small Shareholders' Director. According to this rule, no person shall hold office at the same time as Small Shareholders' Director in more than two companies. Hence, if Mr. Raj is already a Small Shareholders' Director in two other companies, he cannot be appointed as such in TRG Ltd.

Question 7

- (a) *The Central Government came into possession of certain facts and documents, which indicated that some of the managerial personnel of a Company concerned with the management of the affairs thereof are acting in a manner, which is not desirable and if allowed to carry on, it is likely to cause serious injury to the interest of the trade, industry and business to which the company pertains. You are required to state the circumstances and manner in which the Central Government can initiate the process of removal of managerial personnel under the provisions of the Companies Act, 1956.*

(8 Marks)

- (b) *OGC Ltd. was a supplier of raw material to SAM Ltd., which could not make payment to OGC Ltd. owing to huge losses and financial constraints. Ultimately, SAM Ltd. went into liquidation and Official Liquidator was appointed. OGC Ltd. filed a suit for recovery of its dues. The Court awarded a decree in favour of OGC Ltd. Armed with the Court's*

decree, OGC Ltd. approached the Official Liquidator to pay the amount to it in preference over dues of the workmen. The workmen protested the demand of OGC Ltd. and contended that their dues rank pari passu with the Secured Creditors and will override all other claims of other creditors even where a decree has been passed.

You are required to ascertain the validity of the argument of the workmen in the light of the provisions of the Companies Act, 1956 and the decided cases on the subject.

(7 Marks)

Answer

(a) As per provisions of Section 388B of the Companies Act, 1956, if in the opinion of the Central Government, there are circumstances suggesting:

- (a) that any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust; or
- (b) that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices, or
- (c) that a company is or has been conducted and managed by such person in a manner which is likely to cause or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or
- (d) that the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest.

Then, in any of the above circumstances the Central Government may state a case in the form of an application against the such person and refer the same to the Company Law Tribunal with a request that the Company Law Tribunal may enquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of Director or any other office connected with the conduct and management of any company.

The Company Law Tribunal is empowered to record its decision under the provisions of Section 388D of the Companies Act, 1956 and such decision shall be recorded by it after concluding the hearing of the case in which such person shall join as the respondent.

Section 388E of the Companies Act, 1956 states that the Central Government shall, by order, remove from office any director or any other person concerned in the conduct and management of the affairs of a company, against whom a decision of the Company Law Tribunal under Section 388D has been recorded.

NOTE: Powers of the Company Law Board has been transferred to the National Company Law Tribunal by the Companies (Second Amendment) Act, 2002 and assented

by the President of India on 13.01.2003. This will take effect from the date of full enforcement. Till then, powers being currently exercised by the Company Law Board shall continue to be exercised.

- (b) The problem given in the question is covered by the provisions of Section 529A of the Companies Act, 1956 read with Sections 529 and 530 of the said Act. The effect of combined reading of these sections is that the workmen of the company become secured creditors by operation of law to the extent of the workmen's dues and are entitled to proportional payment along with other secured creditors. If there is no secured creditor then the workmen of the company become unsecured preferential creditors under the said Section 529A to the extent of the workmen's dues. The purpose of the said section 529A is to ensure that the workmen should not be deprived of their legitimate claims in the event of the liquidation of the company and the assets of the company would remain charged for the payment of workmen's dues and such charge will be pari passu with the charge of other secured creditors. There is no other statutory provision overriding the claim of the secured creditors except the said Section 529A.

Thus under the said Section 529A, the dues of the workmen and debts due to the secured creditors are to be treated pari passu and have to be treated as prior to all other dues.

Thus, the law is very much clear in this respect and the Hon'ble Supreme Court of India held in the case of UCO Bank [(1994) 81 Comp. Cas 780] that the provisions of Section 529A of the Companies Act, 1956 will override all other claims of the creditors even where a decree has been passed by a court.

In view of the above stated legal position, the contention of the workmen of SAM Ltd. is valid and the Official Liquidator will have to pay them in priority over the decreed dues of OCG Ltd.

Question 8

- (a) *HPC Ltd. for a number of years was in various types of business. In order to exit from its non-core business, its management decided to hive off the business of Food Processing by demerging the said business with an associate company, namely, BCD Ltd. You are required to advise briefly, with reference to the provisions of the Companies Act, 1956, the steps the management should take to give effect to the proposed demerger.*

(8 Marks)

- (b) *Following transactions are made by a public company. You are required to examine the same whether these transactions can be termed as Loans to Directors requiring the approval of the Central Government as required under Section 295 of the Companies Act, 1956:*
- (i) *A salary advance of Rs.5,000 to an employee, who is the wife of the managing director of the company.*
 - (ii) *Sale of company's flat to a director at prevailing market price, out of which the director pays 50% (fifty per cent) immediately and contracts to pay balance amount in 10 equal annual instalments.*

- (iii) *Making a deposit with the landlord under a licence arrangement for securing a residential accommodation for the managing director of the company.*
- (iv) *Loan to its 100% (One hundred per cent) subsidiary company.* (7 Marks)

Answer

- (a) HPC Ltd. can demerge its food processing business with an associate company, BCD Ltd. by obtaining the approval of Company Law Tribunal (CLT earlier such power was vested in High Court and the High Court can continue to exercise such power till the CLT becomes fully functional) as provided in section 394 of the Companies Act, 1956 for this purpose, HPC Ltd. is required to take the following steps:
- (1) HPC Ltd., known as “Transferor Company” for this purpose, has to prepare a scheme under which its properties and liabilities in respect of food processing business will be transferred to BCD 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 CLT 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 CLT. 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 CLT. It may be noted that the resolution must be passed by a majority in number representing $\frac{3}{4}$ in value of the members/creditors as required under Section 391(2) of the said Act.
 - (5) Thereafter, HPC Ltd. is required to move to CLT jointly with BCD Ltd. for approval of the scheme disclosing all material facts relating to the Company. (Proviso to section 391(2). CLT 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 CLT's order, HPC 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 CLT. [(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 CLT in the manner as directed by it.
- (b) (i) As per the decision of the Madras High Court in the case of *M.R. Electronics Components Ltd. vs. Asst. Registrar of Companies* [(1987) 61 Comp. Cases 8], a salary advance totalling Rs.5,000/- made to an employee of the company who

happens to be the wife of the managing director does not per se amount to a loan so as to violate Section 295 of the Companies Act, 1956. In view of this decision of the Madras High Court, salary advance of Rs.5,000/- to an employee who is the wife of the managing director is not hit by Section 295 requiring the approval of the Central Government. The said judgement also stated that the burden of proving that the transaction is sham lies on the prosecution.

- (ii) The Bombay High Court in a petition in the case of *Dr. Fredie Ardeshir Mehta Vs. Union of India [(1991) 70 Comp. Cases 210]* held that a company selling one of its flats to one of its directors on receiving half price in cash and agreeing to accept the balance in instalments does not give loan to its director. It is a credit sale. It cannot be described even as an indirect loan. Thus, as per this judicial pronouncement, the transaction as stated in the question does not amount to a loan to director and hence does not require the approval of Central Government as contemplated in Section 295.
- (iii) Where a company secures residential accommodation for its managing director's use by purchase or by entering into a licence arrangement under which the company has to deposit a certain amount with the land lord, to secure compliance of the licence agreement, such deposit or the cost of purchase of property cannot be regarded as loan or advance to the managing director attracting the provisions of Section 295. The said transaction cannot be termed as a book debt also attracting the provisions of Section 296. It is no concern of the managing director on what terms the company secures premises for his residential accommodation.
- (iv) As per Section 295(2)(b) of the Companies Act, 1956 loan by a holding company to its subsidiary company is outside the purview of the provisions of Section 295(1) and hence no prior approval of the Central Government is required for such loans.

Question 9

- (a) *PNT Ltd. is a company, which is listed with Mumbai Stock Exchange. Its 18th Annual General Meeting was held at Mumbai on 30th September, 2005 in respect of financial year ended 31st March, 2005, whereat all the usual business required to be conducted by a company under the provisions of the Companies Act, 1956 were carried out. Following further information is also available:*
 - (i) *The Company has total 8 Directors (including the Chairman) out of which 2 Directors are not liable to retire by rotation.*
 - (ii) *The Company has its registered office at Mumbai and a branch at Kolkata.*
 - (iii) *From the audited annual accounts for year ended 31st March, 2005, it is observed that Directors have proposed a dividend of 20% on equity share capital.*
 - (iv) *75% of the shares of the Company are held in dematerialized form and balance in physical form.*
 - (v) *The accounts of Kolkata Branch of the Company are audited by a firm of Chartered Accountants, who are not the Statutory Auditors of the Company.*

Based on the above, you are required to draft the Minutes of the proceedings of the Annual General Meeting of PNT Ltd. (10 Marks)

- (b) S Ltd. is a subsidiary company of H Ltd. The Financial year of H Ltd. is from 1st April to 31st March whereas the financial year of S Ltd. is 1st July to 30th June every year. This is now causing difficulties particularly in view of the requirement of reporting and circulating the consolidated annual accounts as required by Accounting Standard AS 21. The Board of Directors of H Ltd. decides that the accounting year of S Ltd. for the year 1st July, 2005 to 30th June, 2006 be extended from present 12 months to 21 months, i.e. 1st July, 2005 to 31st March, 2007, so that the financial years of the holding company and the subsidiary company end on the same date.

State the provisions of the Companies Act, 1956 in this respect. (5 Marks)

Answer

(a)

PNT LIMITED

MINUTES OF THE PROCEEDING OF THE 18TH ANNUAL GENERAL MEETING OF THE MEMBERS OF THE COMPANY HELD AT _____ MUMBAI ON 30TH SEPTEMBER, 2005 AT _____ A.M.

PRESENT

Mr. _____	Chairman & Managing Director
Mr. _____	Wholetime Director
Mr. _____	Director (Audit Committee Chairman)
Mr. _____	Director
Mr. _____	Director
Mr. _____	Director
Mr. _____	Director
Mr. _____	Director
Mr. _____	Member
Mr. _____	Member
Mr. _____	Member
Mr. _____	Member
Mr. _____	Member
Mr. _____	Member (Through Proxy)
Mr. _____	Member (Through Proxy)
Mr. _____	Representative of _____ Limited U/s 187
Mr. _____	Secretary

SUMMARY OF MEMBERS' ATTENDANCE:

1) In Person _____ As per signatures obtained on attendance Slips

2) By Proxy _____ As per signatures obtained on attendance Slips

Mr. _____, Chairman took the chair to conduct the Meeting.

The Chairman declared that _____ valid proxies representing _____ Equity Shares have been received in the required form.

The Chairman further declared that necessary quorum being present, the meeting could proceed with the stipulated business.

The Register of Directors' Shareholding maintained under Section 307 of the Companies Act, 1956 was placed before the Meeting and was kept open and accessible to all concerned during the continuance of the Meeting.

With the consent of the members present, the Notice convening the Meeting was taken as read.

Since the Directors' Report and Audited Annual Accounts were circulated before hand, the same were taken as read with the permission of the members present.

Thereupon, at the direction of the Chairman, Secretary of the Company read out the Auditors' Report.

At this stage, the Chairman briefed the members about the affairs and activities of the Company.

ITEM NO.1

Adoption of Balance Sheet & Profit & Loss Accounts, Auditors' & Directors Report thereon:

The Chairman placed before the Meeting the Auditors' and the Directors' Report and the Audited Annual Accounts of the Company for the year ended 31st March, 2005 for consideration and adoption and proposed the following Ordinary Resolution, which was seconded by Mr. _____.

"RESOLVED THAT the Audited Balance Sheet as at 31st March, 2005 and the Profit & Loss account for the year ended on that date together with the Reports of the Auditors and that of the Directors thereon, as circulated among the members and placed before the meeting be and is hereby received, considered, approved and adopted."

The Chairman then invited the members for their comments. Some members participated in the discussions and sought some clarifications. The same were duly explained by the Chairman and the Audit Committee Chairman.

Thereafter, the Resolution was put to vote on a show of hands and the same was declared carried unanimously.

ITEM NO.2

Following resolution was proposed as Ordinary Resolution

Proposed by: Mr. _____ Seconded by Mr. _____

“RESOLVED THAT as recommended by the Directors, Dividend @ 20% on Equity Share for the year ended 31st March, 2005 on _____ Equity Shares of Rs. _____ each, be and is hereby declared and the same be paid subject to the provisions of Section 206A of the Companies Act, 1956 to those members or their mandatees whose names stand registered on the Company’s Register of Members:

- i) as Beneficial Owners as at the date of this Annual General Meeting as per the lists to be furnished by National Securities Depository Limited and the Central Depository Services (India) Ltd in respect of the shares held in Electronic form, and
- ii) as Members in the Register of Members of the Company after giving effect to valid share transfers in physical form lodged with the Company or the Registrar & Share Transfer Agent of the Company before the date of start of the Book Closing as announced.

The Resolution was put to vote on a show of hands and the same was declared carried unanimously.

ITEM NO.3

Election of Mr. _____ as Director

Following resolution was proposed as Ordinary Resolution

Proposed by: Mr. _____ Seconded by: Mr. _____

“RESOLVED THAT Mr. _____, Director, retiring by rotation, under the provisions of Article _____ of the Articles of Association of the Company, being eligible, be and is hereby re-elected as a Director of the Company.”

The Resolution was put to vote on a show of hands and was declared carried unanimously.

ITEM NO.4

Election of Mr. _____ as Director.

Following resolution was proposed as Ordinary Resolution

Proposed by: Mr. _____ Seconded by Mr. _____

“RESOLVED THAT Mr. _____, Director, retiring by rotation, under the provisions of Article _____ of the Articles of Association of the Company, being eligible, be and is hereby re-elected as a Director of the Company.”

The Resolution was put to vote on a show of hands and was declared carried unanimously.

ITEM NO.5

(a) Appointment of M/s _____ as Auditors

Following resolution was proposed as Ordinary Resolution

Proposed by: Mr. _____ Seconded by: Mr. _____

"RESOLVED THAT pursuant to the provisions of Section 224A of the Companies Act, 1956, M/s _____, Chartered Accountants, be and are hereby re-appointed Auditors of the Company to hold office as such from the conclusion of this meeting until the conclusion of the next Annual General Meeting and the Board of Directors be and are hereby authorised to fix their remuneration and re-imbursement of out-of-pocket expenses as per recommendation of the Audit Committee.

The Resolution was put to vote on a show of hands and was declared carried unanimously.

(b) Appointment of M/s _____ as Branch Auditors

Following resolution was proposed as Ordinary Resolution

Proposed by: Mr. _____ Seconded by: Mr. _____

"RESOLVED THAT pursuant to the provisions of Section 224A read with Section 228(3) of the Companies Act, 1956, M/s _____, Chartered Accountants be and are hereby re-appointed Branch Auditors of the Company's Kolkata Branch to hold office as such from the conclusion of this meeting until the conclusion of the next Annual General Meeting and the Board of Directors be and are hereby authorized to fix their remuneration and re-imbursement of out-of-pocket expenses as per recommendation of the Audit Committee.

The Resolution was put to vote on a show of hands and was declared carried unanimously.

There being no other business to transact, the meeting ended with a vote of thanks to the Chair.

Date:

CHAIRMAN

(b) Section 213(1) of the Companies Act, 1956 states as follows:

Where it appears to the Central Government desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting, the Central Government may on the application or with the consent of the board of directors of the company whose financial year is to be extended, direct that in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return, shall not be required to be submitted held or made earlier than the dates specified in the direction notwithstanding anything to the contrary in the Companies Act, 1956 or in any other Act for the time being in force.

Thus, the management can extend the financial year of S. Ltd. from 12 months to 21 months as mentioned in the question with the approval of the Central Government.