

PAPER – 4 : CORPORATE AND ALLIED LAWS

Question No.1. is compulsory.

Answer any five questions from the remaining six questions

Question 1

- (a) *The agenda for the meeting of the Board of Directors of M/s Brilliant Enterprises Ltd. held on 20-3-2011 for adopting the annual accounts for the year ended 31-12-2010 included an item relating to payment of dividend. At the meeting it became apparent that the profits made during the year ended 31-12-2010 were inadequate to declare dividend. The Board was keen to maintain the rate of 20% dividend on the equity shares as declared in the previous years so as to maintain the image of the company. The company has some accumulated profits earned in previous years, which were transferred to reserves. Advise the company as to how it should go about to achieve the objective to pay dividend at the rate of 20% on the equity shares. (5 Marks)*
- (b) *Evershine Ltd., whose financial year ended on 31st March, 2010 held its annual general meeting on 30th September, 2010. The meeting transacted all other business except the accounts as they were not ready and adjourned the meeting to 20th December, 2010 for consideration of accounts. The Registrar of Companies issued show cause notice for violation of section 210 of the Companies Act, 1956. Advise. (5 Marks)*
- (c) *M/s Ganesham & Company is a member of recognized stock exchange. Nova Crafts Export Limited desires that shares of the company may be bought and sold by M/s Ganesham & Company on their own as well as on behalf of the investors. Advise M/s Ganesham & company whether they can do so under the provisions of the Securities Contracts (Regulation) Act, 1956. (5 Marks)*
- (d) *XYZ Ltd. was registered in the year 2005 under Companies Act, 1956. There are allegations that the three directors who manage the affairs of the company are siphoning the funds of the company. The company has not declared any dividends on the ground that company is incurring losses. Mr. A, who controls 51% of the share capital of the company sends a notice to the management that he will inspect the books of account to verify the allegations. Examine the right of Mr. A to carry out the inspection. State the persons who have the right to carry out the inspection under the Companies Act, 1956. (5 Marks)*

Answer

- (a) **Payment of Dividend out of the accumulated profits:**

According to Section 205A (3) of the Companies Act, 1956, where, owing to inadequacy or absence of profits in any year, any company proposes to declare dividend out of the accumulated profits earned by the company in previous years and transferred by it to the reserves, such declaration of dividend shall not be made except in accordance with

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Companies (Declaration of Dividend out of Reserves) Rules, 1975, as may be made by the Central Government in this behalf and where any such declaration is not in accordance with such rules, such declaration shall not be made except with the previous approval of the Central Government.

According to the rules, dividend can be declared by the company out of accumulated profits subject to the following conditions;

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

Thus, in the present case, if M/s. Brilliant Enterprises Ltd. is not complying with the conditions mentioned in the Companies (Declaration of Dividend out of Reserves) Rules, 1975 then it is required to take previous approval of the Central Government for declaring dividend at the rate of 20% on the equity shares.

(b) Adjournment of meeting as accounts were not ready:

As per Section 166(1) of the Companies Act, 1956 every company must hold its first Annual General Meeting within 18 months of its incorporation and subsequently one in each calendar year. Not more than 15 months shall elapse between the two Annual General Meetings. Powers are vested in the Registrar of companies to grant extension of time up to 3 months for holding an Annual General Meeting for genuine reasons.

Section 210(3)(b) provides that every company should lay before every subsequent Annual General Meeting its annual accounts within 6 months or the extended period for holding Annual General Meeting, if any, granted by the Registrar of Companies, from the date of closure of the accounts.

Annual General Meeting including any adjournment thereof shall be completed within the statutory period specified under section 166 and 210. Company cannot adjourn the Annual General Meeting beyond the last date on which the Annual General Meeting is required to be held.

In the given case, Evershine Ltd. convened and held the Annual General Meeting within 6 months from the date of closure of the accounts, but failed to lay the accounts within 6 months. Hence, it has violated the provisions of section 210 of the Act and the Registrar of Companies was justified in issuing the show cause notice.

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ALTERNATIVE ANSWER:

Question refers to advising the company about the action to be taken by the company with regard to the matter referred to in the question. Since the company has violated the provisions of Section 210 of the Companies Act, 1956, therefore, the company has to go for compounding of offence under Section 621A, since the offence is punishable with imprisonment or fine or with both.

Notes:

1. Registrar of Companies permission is required only when Annual General Meeting is not at all held. Here Annual General Meeting has been held and adjourned for item relating to laying over of annual accounts.
2. In the given case since the adjourned meeting is the continuation of the Annual General Meeting, therefore, question of seeking extension from the Registrar does not arise.

(c) Share Transactions by Member of Stock Exchange:

Members of stock exchange normally carry out transactions on behalf of investors and hence principal-agent relationship between them exists. A member can enter into transactions as principal with another member of the exchange only. If a member of stock exchange desires to enter into contract as principal with a non-member then he has to get written consent from such person to act as principal. The Contract note should indicate that he is acting as principal [Section 15 of the Securities Contracts (Regulation) Act, 1956].

Where the member has obtained the consent of such person otherwise than in writing he shall ensure written confirmation by such person or such consent within three days from the date of such contract.

Spot delivery contracts are not within the purview of Section 15 of the said Act (Section 18).

Thus, M/s Ganesham & Company must bear in mind the above restrictions while entering into any transaction as principal with a non-member.

(d) Right to carry out the inspection of the books of accounts:

Mr. A has no right to carry out an inspection of the books of accounts of the company despite the fact that he holds 51% of the share capital of the company and can be called the 'owner' of the company. According to Sections 209 and 209A of the Companies Act, 1956, the following persons have the right to carry out the inspection of the books of accounts of the company.

- (i) Directors of the Company [Section 209(4)]
- (ii) Registrar of Companies [Section 209A]

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- (iii) Such officer of Government as may be authorised by the Central Government in this behalf (Section 209 A).
- (iv) Such officers of SEBI as may be authorised by SEBI [Section 209A (1) (iii)] read with Section 55A.

Since Mr. A is not a director, he is not eligible to carry out the inspection.

Note: According to Regulation 95, of Table A, Companies Act, 1956, a member has right to inspect the books of accounts if he is so authorized by a resolution of the Board of Director or a resolution passed by the company in general meeting. According to this, the members have right to inspect the books of account.

Question 2

- (a) *The Balance Sheet of International Operators Ltd as at 31-03-2011 disclose the following position*

	₹ (in crores)
Share Capital	100
Reserves & Surplus	300
Secured Loans	150
Unsecured Loans	100
Current Liabilities	70

Mr X, the Managing Director of the company approaches the Royal Bank for a secured loan of ₹ 600 crores to finance the new projects to be taken up shortly. The Bank seeks your advise whether it can grant the loan of ₹ 600 crores on the application of Mr. X. Advise the Royal Bank having regard to the provisions of the Companies Act, 1956.

(8 Marks)

- (b) *Define "contributory" in a winding up. Explain the liabilities of contributories as present and past member.*

(8 Marks)

Answer

- (a) **Powers of directors related to borrowing funds by the company:**

The management of Royal Bank should be aware of the provisions of Sections 292 and 293 of the Companies Act, 1956, which govern the powers of directors in the matter of borrowing funds by the company. According to Section 292, the Board of Directors of International operators Ltd. can exercise the borrowings by passing a resolution at a duly convened meeting of the Board of Directors. However, under Section 293, the Board of Directors of a public company cannot, except with the consent of the members of the company in general meeting borrow moneys, where the moneys to be borrowed together

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with the moneys already borrowed by the company, exceeds the aggregate of the paid up capital of the company and its free reserves.

In the present case, the proposal of the company to borrow ₹ 600 crores exceed the paid up share capital and free reserves of the company to the tune of ₹ 200 crores (i.e. ₹ 600 crores – ₹ 400 crores = ₹ 200 crores) without taking into account the existing loan. Thus Royal Bank should advise Mr. X, the Managing Director of the company to get the approval of the shareholders of the company as provided in Section 293 before considering the request of the company for a loan of ₹ 600 crores. In case, the loan is secured by mortgaging the assets of the company the bank should also ensure that the particulars of the charge are registered with the Registrar of Companies as provided in Section 125 of the Companies Act, 1956.

(b) Contributory:

According to Section 428 of the Companies Act, 1956 in a winding up, the term "contributory" means a past or present member liable to contribute to the assets of the company in the event of its being wound up and includes holders of shares which are fully paid up. If a member is once placed in the list of contributories, he is liable to the extent of original shares that remain unpaid, unless he proves that he should not have been placed in the list.

When a company goes into liquidation, every member, whether past or present, has to contribute to the assets of the company. However, a past member will not be required to contribute in the following circumstances:

- (a) if he had ceased to be a member for a period of one year or upwards before the commencement of winding up.
- (b) if the debt or liability of the company was contracted or incurred after he ceased to be a member.
- (c) if the present members are able to satisfy the contributions required to be made by them under the Act.

Question 3

- (a) *The members of both Sugam Synthetix Limited and Gaurav Textiles Limited approved the schemes of amalgamation by overwhelming majority. A reputed firm of Chartered Accountants fixed the exchange ratio. The scheme of amalgamation was submitted, as per procedure, for the sanction of the Court. During pendency of the matter a small group of members of one of the merging companies objected to the amalgamation on the ground that the exchange ratio was unfair.*

Decide whether the said objection is likely to be sustained. Would you answer be different if similar objection was raised by the Central Government? (8 Marks)

- (b) *Point out the circumstances where under the following powers may be exercised by the Securities and Exchange Board of India:*

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- (i) Prohibiting a company from issuing or publishing any document or advertisement soliciting money from public for the 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 Securities and Exchange Board of India Act, 1992? (8 Marks)

Answer

- (a) **Amalgamation – Exchange Ratio:** In the matter given in the question, the court leaves the aspect of share valuation to expert valuers and shareholders. Unless the person who challenges the valuation satisfies the court that the valuation is grossly unfair, the court will not disturb the scheme of amalgamation. (*Piramal Spg. Vs. Weaving Mills Ltd.*)

In this case, the valuation is confirmed to be fair by reputed firm of Chartered Accountants and is also confirmed by majority of members. The objection raised by some shareholders of a small group cannot be sustained. (*Hindustan Lever Employees Union Vs. Hindustan Lever Ltd.*)

Section 394A of the Companies Act, 1956 requires the Court (Tribunal) to give notice of every application made to it under Sections 391 or 394 of the said Act, to the Central Government. The Court (Tribunal) should take into consideration the representations, if any, made to it by the government before passing any order. The role played by the Central Government is that of impartial observer who acts in public interest and advises the court (Tribunal) whether it is or it is not feasible for the two companies to amalgamate. Thus, in case of objection by the Central Government, the court will refuse to interfere unless the Government establishes that the exchange ratio was unfair and not in public interest. (*M.G. Investment & Industrial Co. Ltd. Vs. New Shorrock Spinning & Mfg. Coi. Ltd.*)

- (b) **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 if such prohibition is necessary for the purpose of protection of investors.

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.

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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.

The appeal lies only on question of law. As far as facts are concerned, decision of the SAT is final. Further Section 20A of the said Act bars jurisdiction of Civil Court in respect of orders issued by the SEBI.

Question 4

- (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? (8 Marks)

- (b) *X Ltd. was registered in the year 2005 under the Companies Act 1956. The management of the company decides to make donation to recognized political party. Advise the management about the restrictions and the extent up to which such donation can be made under the aid Act. Will it make any difference if X Ltd. was registered in the year 2009?* (8 Marks)

Answer

- (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 Section 5 of 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.

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(b) Donation to Recognized Political Party:

According to Section 293A of the Companies Act, 1956, 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 (i) to any political party, or (ii) for any political purpose to any person. Any other company may however, contribute any amount directly or indirectly to any political party or for any political purpose to any person, provided that the aggregate of the amount so contributed by the company in any financial year shall not exceed 5% of the its average net profits determined in accordance with the provisions of Sections 349 and 350 of the Act during the three immediately preceding financial years.

Thus X Ltd., in the present case, can contribute to the recognized political party provided it is not a Government Company within the meaning of Section 617 of the Act 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 X Ltd. only out of its profits.

Further, the political donation is required to be authorized by a resolution passed at a Board of Directors meeting (Section 293A (2)). In addition, the company is also required to disclose in its Profit & Loss Account particulars of total amount contributed and the name of the political parties to which such amount has been contributed. [Section 293A (4)].

If X Ltd. Was registered in the year 2009 it cannot make political donations because the company has not been in existence for three years.

Question 5

(a) *Explain what is meant by (i) Compoundable Offences and (ii) Non-Compoundable Offences. State the authorities who can compound the said offences. Indicate whether the following offences are compoundable or non-compoundable:*

- (i) *Failure to hold the annual general meeting of the company.*
- (ii) *Failure to file copies of annual accounts with the Registrar of Companies.*
- (iii) *Acceptance of deposits in excess of the prescribed limits and*
- (iv) *Non-distribution of dividend to the members within the prescribed time. (8 Marks)*

(b) *Explain when a Public Limited Company is necessarily required to appoint a managing Director under the Companies Act, 1956. Draft a Board resolution for the appointment of Mr. Intelligent as the managing Director of Smart Limited on a salary of ₹ 5 Lakhs per month along with other usual perquisites. (8 Marks)*

Answer

(a) Compoundable and Non Compoundable Offences

Compoundable offences are those offences under the Companies Act, 1956 which can be compounded by the Regional Director if the maximum amount of fine is upto

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₹ 50,000 and by the Company Law Board if the maximum amount of fine exceeds ₹ 50,000. There are certain offences punishable with imprisonment or with fine or both, which can be compounded with the permission of the Court under Section 621A (6) (a) of the Companies Act, 1956. Non-compoundable offences are those punishable with imprisonment and fine under Section 621 A (7) (b) of the Act.

- (i) Failure to hold the annual general meeting of the company is compoundable u/s 168 of the Act because there is only a monetary penalty.
- (ii) Failure to file copies of annual accounts with the Registrar of Companies is also compoundable under Section 220 (3) because there is monetary penalty only.
- (iii) Acceptance of deposits in excess of the prescribed limits is a non-compoundable offence under Section 58A (6) (a)(i) because it is punishable with imprisonment and fine.
- (iv) Non distribution of dividend to the members within the prescribed time limit of 30 days under Section 207 is also non-compoundable because it is punishable with imprisonment and also fine.

(b) Appointment of Managing Director:

According to Section 269 of the Companies Act, 1956 every public company or a subsidiary of a public company having a paid up share capital of ₹ 5 crores or more is required to appoint a Managing Director or Whole Time Director or a Manager.

In the given case, the remuneration exceeds ₹ 4 Lakhs, therefore, as per Schedule XIII Part II-C special resolution at a general meeting of the company is also required.

Draft of Board Resolution

Resolved that Mr. Intelligent be and is hereby appointed as Managing Director of the Company subject to the approval of the Central Government for a period of 5 years effective from 1-4-2011 and that he may be paid remuneration as follows:

- (i) Salary: ₹ 5 lakhs per month plus annual increment of ₹ 2.5 lakhs.
- (ii) Commission: 1% of the net profits of the company subject to a maximum of ₹ 10 lakhs.
- (iii) Perquisites: Housing, car, etc. as applicable to the Senior Executive of the company.

Resolved further that the Secretary of the Company be and is hereby authorized to make an application to the Central Government seeking their approval to the above appointment.

Sd/-

For the Board of Directors

Note: It is assumed that the remuneration proposed to be paid to Mr. Intelligent exceeds the limits that down in Schedule XIII to be the Companies Act, 1956, in which case passing of special resolution in general meeting and the approval of the Central Government is required.

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Question 6

(a) *The Registrar of Companies, Mumbai filed a petition in the Bombay High Court for compulsory winding up of ' Constant Overtrading Ltd' on the ground that a perusal of the Balance Sheet of the company as at 31-03-2009 revealed that its liabilities far exceeded the assets and consequently the company is unable to pay its debts. Examine with reference to the provisions of the Company Act, 1956, the various factors the High Court will take into account before the company is ordered to be wound up compulsorily and whether there is any justification in the present case for the Court to order winding up of the company. (8 Marks)*

(b) *Annual general meeting of Hero Ltd. has been scheduled in compliance with the requirements of the Companies Act, 1956. In this connection, it has some directors who are rotational and out of which some have been appointed long back, some have been appointed on the same day.*

Decide in this connection:

- (i) *Which of the directors shall be retiring by rotation and be eligible for re-election?*
- (ii) *In case two directors were appointed on the same day, how would you decide their retirement by rotation?*
- (iii) *In case the meeting could not decide how the vacancies caused by retirement to be dealt with, what shall be consequences ?*
- (iv) *What will be your answer, assuming that the matter could not be decided even at the adjourned meeting? (8 Marks)*

Answer

(a) Compulsory Winding Up:

In the case law *Registrar of Companies Punjab vs. Ajanta Lucky Scheme and Investment Co. Private Ltd.*, the Registrar of Companies filed a petition for the winding up of the respondent company under Section 433 (e) read with Section 439(5) of the Companies Act, 1956 on the ground that the Company was unable to pay its debts and that its liabilities exceeded its assets. In the said case it was held by the Court that for determining the Company's ability or otherwise to pay its debts, it was to be considered whether the company was able to meet its liability as and when they accrued due. Section 434 of the Act, prescribes the circumstances in which a company was to be treated as unable to pay its debts. Admittedly none of these circumstances was present in the said case and no complaint had even been received by the company from its creditors as regards non-fulfilments of any of their claims against the company. In a case where no debt had been due, a demand, therefore, could not be made. The mere fact that certain liabilities might accrue due in further, which could exceed the existing assets of the company, would not necessarily lead to the conclusion that the company would be unable to meet its liabilities when they accrued due. The mere fact that the Company's

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liabilities being in excess of its assets could not *ipso facto* be a ground for putting the company into liquidation. The test would be that the company should be commercially solvent i.e., the company ought to be in a position to meet its liabilities as and when they arose.

Thus in the present case, the Bombay High Court may not order the winding up of the Company viz. Constant Overtrading Ltd. Merely because its liabilities far exceeded the assets of the Company. The Court will take into account whether the company has failed to meet any of the demands made by the creditors etc.

(b) Rotational Directors and Retirement:

- (i) According to Section 256 of the Companies Act, 1956, out of the 2/3rds rotational directors only 1/3rds must retire by rotation at one general meeting. If the number is not three or multiple of three, then the number nearest to 1/3 must retire from office. First those directors who are the longest in office must retire.
- (ii) If two directors have been appointed on the same day, their retirement will be determined either mutually or by lot.
- (iii) The vacancies caused by such retirement may be filled in the same annual general meeting by appointing either the retiring directors or some other person. But the meeting may also decide that the vacancies shall not be filled.
- (iv) Where, however, the meeting has not done either of two, then the meeting is deemed to have been adjourned for a week. If at the adjourned meeting held after the said week, fresh appointment is not made and if no resolution against appointment is passed, then the retiring directors shall be deemed to have been appointed except in the following cases:
 - (a) Where at the meeting or at the previous meeting the resolution for the reappointment of a particular director was put to vote but lost;
 - (b) Where the retiring director has expressed his unwillingness to be reappointed by a written notice addressed to the company or its Board of Directors;
 - (c) Where he is unqualified or has been disqualified for appointment; and
 - (d) Where any special or ordinary resolution is required for his appointment or reappointment.

Question 7

Attempt any four:

- (a) *During the financial year 2010-11 Mr. Bhattacharyya resided in India for a period of 180 days and thereafter went abroad. On 1st April, 2011 Mr. Bhattacharyya came back to India as an employee of a business organization. Decide the residential status of Mr. Bhattacharyya during the financial year 2010-11 under the provisions of the Foreign Exchange management Act, 1999. (4 Marks)*

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- (b) *What are the provisions in the Insurance Act, 1938 regarding nomination by Life Insurance Policy holder? Whether a minor can be a nominee in a Life Insurance Policy?* (4 Marks)
- (c) *The Competition Commission of India has received a complaint that M/s ABC company 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 M/s ABC company enjoys a dominant position in the industry.* (4 Marks)
- (d) *"Associate words should be understood in common sense manner". Explain the statement in the light of rules of interpretation of statutes.* (4 Marks)
- (e) *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.* (4 Marks)

Answer

- (a) 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 2010-2011 for more than 182 days and his residential status during the next year, i.e. 2011-2012 is non-resident even though he stayed in India from 1st April, 2011 as an employee. His residential status in 2010-2011 cannot be ascertained as his stay in India during the previous year 2009-2010 is not known.

- (b) Nomination by Life Insurance Policy Holder:**

As per Section 39 of the Insurance Act, 1938, the holder of a policy of life insurance on his own life may nominate a person or persons to whom the money secured by the life insurance policy shall be paid in the event of his death. Such nomination can be made either at the time of taking the policy or at any time before the maturity of the policy. Such nomination is either incorporated in the text of the policy or is stated as an endorsement on the policy document. The nomination can be cancelled or altered by the policyholder at any time before the maturity of the policy. The insurer is required to communicate to the policyholder that it has recorded the nomination, its cancellation or alteration as the case may be. In case the policyholder survives the full term of policy, the insurer shall pay the maturity amount to him only and the nomination becomes redundant. In a case where the nominee dies before the maturity of the policy and if no new nomination is made, the maturity proceeds of the policy shall be paid to the policy holder and if dies before the maturity, to the legal heirs of the policy holders.

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Minor as a nominee: A minor can be nominated as a nominee in life insurance policy by its holder. The only other requirement as per Proviso to Section 39(1) of the said Act is that the policyholder is to appoint, in the prescribed manner, an adult person to receive the money secured by the policy on behalf of the minor in the event of death of the policyholder during the minority of the nominee.

(c) Abuse of Dominant position:

The Competition commission while inquiring whether the enterprise ABC company enjoys a dominant position or not under Section 4 of the Competition Act, 2002 will take the following factors into account:

- (a) Market-share of the enterprise
 - (b) size and resources of the enterprise
 - (c) size and importance of the competitors.
 - (d) economic power of the enterprise including commercial advantages over competitors.
 - (e) vertical integration of the enterprises or sale or service net work of such enterprises.
 - (f) dependence of consumers on the enterprise.
 - (g) 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.
 - (h) 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.
 - (i) countervailing buying power.
 - (j) market structure and size of market.
 - (k) social obligations and size of market.
 - (l) 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.
 - (m) any other factor which the commission may consider relevant for the inquiry.
- (d) Associated Words- Interpretation:** When two words or expressions are coupled together one of which generally exclude the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand there is the concept of "Nosctur A Sociis", that is to say," the meaning of a word is to be judged by the company it keeps. When two or more words which are capable of analogous meaning are coupled together, they are to be understood in their cognate sense. They take, as it were, their colour from each other i.e. more general is restricted to a sense analogous to the less general. For example, in the expression 'commercial establishment means an

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establishment which carries on any business, trade or profession. The term 'profession' is construed with the associated words 'business' and 'trade' and it has been held that a private dispensary does not fall within the definition.

Similarly, the expression 'place of public resort' would have one meaning when coupled with the expression 'roads and streets' and the same expression 'place of public resort' would have quite different meaning when coupled with the word "houses".

(e) 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.

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