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PAPER – 4 : CORPORATE AND ALLIED LAWS

Question No.1. is compulsory.

Answer any five questions from the remaining six questions

Question 1

(a) *Mr. DRT is a director of PCS Ltd. The said company is having sufficient liquid funds and Mr. DRT is in dire need of funds. In order to mitigate the hardship of Mr. DRT the board of directors of PCS Ltd. wants to lend ₹ 5 lakhs to him and ₹ 2 lakhs to his wife. State whether such loans can be given and if so under what conditions. What would be your answer if the company PCS LTD would have been PCS Private Ltd. (4 Marks)*

(b) *M/s KMP Ltd, having a paid up share capital of ₹ 50 lakhs, appointed Mr. BPK as its sole selling agent for a period of 5 years effective from 1st January 2009. The company paid the following remuneration to BPK.*

Year	Amount of remuneration
2009	₹ 4,41,000/-
2010	₹ 6,32,000/-
2011	₹ 7,45,000/-

On and from 1st January 2012, the sole selling agency was terminated by the company. State briefly the approvals that are required to be taken by the company for giving effect to the appointment of Mr. BPK. Also calculate the amount of compensation payable by the company to Mr. BPK under the provisions of the Companies Act 1956. (5 Marks)

(c) *The Board of Directors of M/s RPP Ltd. in a meeting held on 30th April 2012 declared an interim dividend payable on the paid up equity share capital of the company. In the board meeting scheduled for 15th May 2012, the board wants to revoke the said declaration. State with reference to the provisions of the Companies Act, 1956 whether the board of directors can do so. (5 Marks)*

(d) *DVJ Ltd, a company incorporated under the Companies Act, 1956 applies to Bombay Stock Exchange for listing of its shares. The Stock Exchange refuses to grant listing without assigning any reasons for refusal. Company seeks your advice on the options available to it against the Stock Exchange and wants to move the Court. Examining the provisions of the Securities Contracts (Regulation) Act, 1956, advise the company. (6 Marks)*

Answer

(a) **Loan to Director and his relative:** According to Section 295 of the Companies Act, 1956, no public company shall make any loan to any of its director or his relatives either directly or indirectly without obtaining the previous approval of the Central Government.

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Thus, in the instant case, if PCS Ltd. wants to lend ₹ 5 Lakhs to Mr. DRT who is a director in PCS Ltd. and ₹ 2 Lakhs to his wife, then PCS Ltd. has to take the prior approval of the Central Government in this behalf.

The above provisions do not apply to loans etc. advanced by a private company unless it is a subsidiary of a public company. Therefore, if the company PCS Ltd. would have been PCS Private Ltd. then it can give loan to Mr. DRT and his wife without taking prior approval of Central Government.

- (b) **Appointment of Sole Selling Agent:** According to Section 294AA (3) of the Companies Act, 1956, if a company has a paid up share capital of ₹ 50 Lakhs or more, then it cannot appoint sole selling agents without the consent of the company given by a Special Resolution and the approval of the Central Government.

Thus, in the instant case, as the paid up share capital of M/s KMP Ltd. is ₹ 50 Lakhs, it has to take the consent of the company through Special Resolution and it also has to take the approval of the Central Government for appointing Mr. BPK as its sole selling agent for a period of 5 years effective from 1st January, 2009.

Payment of Compensation: According to Section 294A(2) of the Companies Act, 1956, any compensation payable by a company to its sole selling agent for premature loss of office shall not exceed the remuneration which he would have earned if he would have been in office for the unexpired residue of his term, or for three years, which ever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which his office ceased or was terminated, or where he held his office for a period lesser than three years, then average remuneration actually earned by him during such lesser period.

Based on the above provision of the Companies Act, 1956, Mr. BPK is entitled to compensation for the unexpired residue of his term, i.e., for two years since it is shorter than three years. Such compensation shall be calculated on the basis of average remuneration received by him during the years 2009 to 2011. On the basis of figures given in the question, the amount of compensation shall be as follows:

Year	Amount of Remuneration (₹)
2009	4,41,000/-
2010	6,32,000/-
2011	7,45,000/-
Total Remuneration	18,18,000/-
Average Remuneration per annum	6,06,000/-
Compensation payable to Mr. BPK for two years	12,12,000/-

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- (c) **Revocation of declaration of Interim Dividend:** According to Section 205 of the Companies Act, 1956:
- (i) The Board of Directors may declare interim dividend and the amount of dividend including interim dividend shall have to be deposited in a separate bank account within five days from the date of declaration of such dividend. [Section 205(1A)]
 - (ii) The amount of interim dividend so deposited as stated above shall be used for payment of interim dividend. [Section 205(1B)]
 - (iii) The provisions of Sections 205, 205A, 205C, 206, 206A, and 207 of the Companies Act, 1956 have also become applicable to interim dividend to the extent possible. [Section 205(1C)]

In view of the above legal position, the Board of Directors of M/s RPP Ltd. must have deposited the amount of interim dividend declared on 30th April, 2012 into a separate bank account on or before 5th May, 2012 i.e. within five days from 30th April, 2012 when the interim dividend was declared. As stated above, the amount once deposited into a separate bank account, can be used only for payment of interim dividend.

As per provisions of the Companies Act, 1956, the Board of RPP Ltd. has no power to revoke the interim dividend declared on 30th April, 2012 and shall not have any power to use the interim dividend amount transferred to a separate bank account for any other purpose.

In case the amount of interim dividend has not been transferred to a separate bank account and is not paid within the time, the company and its directors have exposed themselves to the applicable penal provisions of the said Act.

- (d) **Refusal of Listing by Stock Exchange:** According to Section 22A of the Securities Contracts (Regulation) Act, 1956 where a recognised Stock Exchange refuses to list the securities of any public company, the company shall be entitled to be furnished with reasons for such refusal. If aggrieved, the company may appeal to the Securities Appellate Tribunal:
- (i) within 15 days from the date on which the reasons for such refusal are furnished to it, or
 - (ii) where the Stock Exchange has omitted or failed to dispose of within the time specified in section 73(1A) of the Companies Act, 1956 (i.e., before the expiry of ten weeks from the date of closing of the subscription list as per prospectus) within 15 days from the expiry of the specified time or within such further period not exceeding one month as Securities Appellate Tribunal may allow.

Hence, DVJ Ltd. may avail the above option accordingly.

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Question 2

- (a) Win Ltd. is a company incorporated 15 years ago and during the last three consecutive financial years it earned profits, as determined under Sections 349 and 350 of the Companies Act, 1956, of ₹ 5.00 lakhs, 8.00 lakhs and 11.00 lakhs. In order to augment its business prospects, it wants to make donations to political parties. State with reference to the provisions of the Companies Act, 1956 whether the company can make such donations and if yes to what extent. Also state which type of donation, Subscription, payment, expenditure is regarded as contribution for political purpose. (8 Marks)
- (b) In the course of administration of the affairs of a limited company, Chairman of the Board of directors came across a matter which required the approval by way of a board resolution. In the prevailing circumstances, it is not possible to convene and hold a Board meeting. The chairman approaches you to advise him of the way and the relevant procedure to obtain such approval without holding the Board meeting. Advise the chairman, taking into account the relevant provisions of the Companies Act, 1956 (8 Marks)

Answer

- (a) **Donation to political parties:** According to Section 293A of the Companies Act, 1956, a company, except a Government Company, which have been in existence for three or more financial years can make political contributions not exceeding five per cent of the average net profits determined in accordance with the provision of section 349 and 350 during the three immediately preceding financial years.

Such a contribution shall be made by a company only after passing a resolution at a meeting of the Board of Directors authorising such contributions.

Based on the provisions of the Companies Act, 1956, Win Ltd. is a company incorporated 15 years ago and during the last three consecutive financial years it earned profits, as determined under Sections 349 and 350 of the Companies Act, 1956 is:

	₹
Total Profit (three years)	24,00,000/-
Average Net Profit	8,00,000/-
Amount of donation to political party	40,000 (5% of 8,00,000)

Therefore, if Win Ltd. wants to make donation to political parties, it can contribute the amount not exceeding ₹ 40,000.

According to sub section 3 of section 293A of the said act, the following donation, subscription, payment, expenditure is regarded as contribution for political purpose:

- (a) given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or

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subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party.

- (b) the amount of expenditure incurred, directly or indirectly, by a company on advertisement in any publication being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, by or on behalf of a political party or for its advantage shall be deemed:
- (i) where such publication is by or on behalf of a political party, to a contribution of such amount to such political party, and
 - (ii) where such publication is not by or on behalf of but for the advantage of a political party to be a contribution for a political purpose to the person publishing it.
- (b) **Passing of Resolution by Circulation:** As per the provisions of the Companies Act, 1956, several Board Resolutions are required in course of carrying on the affairs of a limited company. But it may sometimes so happen that a Board Meeting cannot be held.

To meet such eventualities, the Companies Act, 1956 contains the solution in section 289. According to this section, the board resolution can be passed by way of circulation. It may however be noted that the matter listed in the provisions of section 292 and other sections requiring passing of resolution at the board meetings only cannot be passed by way of circulation and can be passed only at the Board Meeting. The Chairman of the company is advised that the approval in the form of a Board Resolution may be obtained by way of passing the relevant resolution by circulation if the matter is not covered by the barring sections of the said Act.

The procedure to be adopted for the purpose shall be as follows:

- (i) Send the draft of the resolution in duplicate together with the necessary papers, if any, to all the directors then in India. It is to be ensured that the number of such directors is not less than the directors required to form the quorum for a Board meeting.
- (ii) Send the draft of the resolution in duplicate together with the necessary papers, if any, to all other directors at their usual address in India.
- (iii) Obtain one copy of the draft resolution duly signed by the directors, whether approving the resolution or disapproving the same. It may be noted that the resolution shall be deemed to be passed by the Board if all the directors then in India or majority of all directors as are entitled to vote on the matter approve the resolution by signing one copy and returning the same to the company.
- (iv) The resolution passed by circulation shall be placed before the next Board Meeting for confirmation.

The resolution shall be recorded in the minutes of the next Board Meeting.

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Question 3

- (a) 60% shares of Indo-French Ltd. are held by the French group and balance by the Indian group. As per Articles of Association of the company, both groups had equal managerial powers. The relationship between the two groups soured and the operations of the company reached a deadlock. The Indian group approached the Company Law Board (CLB) for action against the French group for oppression as stated in Section 397 of the Companies Act, 1956.

Based on the abovesaid facts, decide the following issues.

- (i) Whether the contention of oppression against the French group by the Indian group is tenable? (8 Marks)
- (ii) What are the powers of CLB in this regard? (8 Marks)
- (b) The management of ABC Ltd. a listed company is contemplating to issue bonus shares in the ratio of 1 : 1. Explain briefly the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 to be followed by the management in this regard. Examine whether a bonus issue when announced can be withdrawn. (8 Marks)

Answer

- (a) (i) Section 397 of the Companies Act, 1956 deals with the remedy in a situation when the affairs of the company are being conducted in a manner oppressive to a shareholder or shareholders. This means that some of the shareholders must be in such a position that they can be oppressed by other shareholders or the management.

In the present case as given in the question, both the Indian Group and the French Group of Indo-French Ltd. are equally strong and none is able to oppress the other. The situation stated in the question is a deadlock but it cannot be termed as oppression. Since it is not a case of winding up of the company, the relief under the said section 397 is not available to the Indian Group. [*Gnanasambandam v. Tamilnad Transporters (Coimbatore) p. Ltd.*] In view of the position discussed, the contention of the Indian Group is not tenable.

- (ii) The powers of the CLB under the provisions of section 397 of the Companies Act, 1956 are discretionary in character. Apart from the general powers envisaged therein, the CLB under section 402 (b) of the said Act, may order the purchase of the shares of one group by the other group. In the case of *Yashovardhan Saboo Vs. Groz Beckert Saboo Ltd.*, the presiding officer ordered the foreign group to buy out the shares of the minority group at the fair price with deadlock and the matters are not sorted out by any other means, an order for winding up of the company may also be made under the just and equitable clause, [*Kishan Kumar Ahuja Vs. Suresh Kumar Ahuja*]. Thus, if the Indian Group or the French Group fails to buy out the shares of the other group, the CLB may order the winding up of the company.

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- (b) **BONUS ISSUE:** According to the provisions of the Companies Act, 1956 and Chapter IX of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, a listed issuer may issue bonus shares to its members if:
- (i) it is authorised by its articles of association for issue of bonus shares, capitalisation of reserves, etc.:
- Provided that if there is no such provision in the articles of association, the issuer shall pass a resolution at its general body meeting making provisions in the articles of associations for capitalisation of reserve;
- (ii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
 - (iii) it has sufficient reason to believe that it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus;
 - (iv) the partly paid shares, if any outstanding on the date of allotment, are made fully paid up

Completion of bonus issue

- (1) An issuer, announcing a bonus issue after the approval of its board of directors and not requiring shareholders' approval for capitalisation of profits or reserves for making the bonus issue, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors:
- Provided that where the issuer is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the bonus issue shall be implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.
- (2) Once the decision to make a bonus issue is announced, the issue can not be withdrawn.

Question 4

- (a) *Amar Textiles Ltd. is a company engaged in the manufacture of fabrics. The company has investments in shares of other bodies corporate including 70% shares in Amar Cotton Company Ltd. and it has also advanced loans to other bodies corporate. The aggregate of all the investments made and loans granted by Amar Textiles Ltd. exceeds 60% of its paid up share capital and free reserves and also exceeds 100% of its free reserves. In course of its business requirements, Amar Textiles Ltd. has obtained a term loan from Industrial Development Bank of India which is still Subsisting. Now the company wants to increase its holding from 70% to 80% of the equity share capital in Amar Cotton Company Ltd. by purchase of additional 10% shares from other existing*

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shareholders. State the legal requirements to be complied with by Amar Textiles Ltd. under the provisions of the Companies Act, 1956 to give effect to the above proposal.

(8 Marks)

- (b) The Reserve Bank of India issued certain directives to a Banking Company. The company does not care to act as per the directives. This fact comes to the notice of the officials of the Government of India. The officials, therefore desire to exercise the Central Government's powers to acquire the said Banking Company. Examining the provisions of the Banking Regulation Act, 1949, state the manner, if any, such powers can be exercised. Also, state the matters that may be incorporated in the scheme of acquisition.

(8 Marks)

Answer

- (a) Amar Cotton Co. Ltd. is not a wholly-owned subsidiary of Amar Textiles Ltd. and hence investments in such a subsidiary company is not covered by exemption under Section 372A(8) (e) of the Companies Act, 1956. As the aggregate of the investments in shares and loans granted to other bodies corporate exceeds 60% of the paid-up share capital and free reserves and also 100% of the free reserves, it is necessary for Amar Textiles Ltd., to pass a special resolution in the General Meeting before increasing its holding from 70% to 80%.

The notice of special resolution must indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made, the purpose of the investment, specific source of funding and such other details.

In the present case, Amar Textiles Ltd., obtained a term loan from Industrial Development Bank of India (IDBI) which is a public financial institution within the meaning of Section 4A of the Companies Act, 1956 and therefore the provisions of Section 372A(2) are attracted and such loan is still subsisting. The company is required to obtain prior approval of IDBI for making any further investment.

As required by provisions of Section 372(2), the investment proposal must be passed at the Board meeting by unanimous decision of all the directors present at the meeting.

The company must enter the prescribed particulars of investment in a register of investment within 7 days of making the investment. [Section 372A(5)]

The company must also take into consideration the guidelines, if any, prescribed by the Central Government under Section 372A(7) of the Companies Act, 1956.

- (b) **Power of Central Government to acquire the undertaking of Banking Companies in certain cases:-** According to Section 36AE of the Banking Regulation Act, 1949, if Central Government is of the opinion that the Banking Company has failed to comply with the direction given to it by Reserve Bank of India (RBI) relating to policy matters under section 21 and 35A and/ or the affairs of the bank being managed in a manner is detrimental to the interest of the depositors or that of to the banking policy, or for better

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provision of credit generally or of credit to any particular section of the community or in any particular area; it is necessary to acquire the undertaking of such banking company, it (Central Government) may after consultation with RBI as it thinks fit, by notified order, acquire the undertaking of such banking company with effect from such date as may be specified in this behalf by the Central Government.

In case of such a notification, on the specified date the undertaking of the acquired bank and its assets & liabilities shall stand transferred to, and vests in Central Government. Before acquiring the undertaking of any banking company, the Central Government shall give a reasonable opportunity to the banking company proposed to be acquired of showing cause against the proposed action.

Power of Central Govt. to make a scheme for the acquired bank in consultation with RBI: According to Section 36AF of the Banking Regulation Act, 1949, the scheme may provide for transfer of assets & liabilities of the acquired bank, constitution of the first Board of Management and incidental matters, the service condition of the employees, compensation payable to the shareholders of the acquired bank and such other incidental, consequential and supplemental, as may be necessary to complete the transfer.

Question 5

(a) *Big Ben Ltd., a reputed public company, had advanced a sum of ₹ 20 lakhs to one of its directors Mr. T on certain terms and conditions and fixing the time limit for repayment thereof. Now Mr. T has approached the company with a request to extend the time limit for repayment of outstanding balance loan amounting to ₹ 10 lakhs by another six months. Answer the following having regard to the provisions of the Companies Act, 1956.*

(i) *Who is authorized to grant the extension as requested by Mr. T ?*

(ii) *Draft an appropriate notice for the meeting where such extension may be granted.*

(8 Marks)

(b) *Explain briefly the provisions of the Companies Act, 1956 regarding constitution of "Audit Committee". MNC Ltd. constituted an audit committee as required by the said Act. The committee in its report dated 30th April 2012 has pointed out various irregularities in the financial transactions entered into by the company. The management of the company does not agree with the contents of the audit committee report. Explain the action that can be taken in this regard.*

(8 Marks)

Answer

(a) (i) **Extension of time limit for repayment of loan:** According to Section 293(1)(b) of the Companies Act, 1956, the Board of Directors of a public company, or of a private company which is a subsidiary of a public company, shall not remit, or give time for the repayment of, any debt due by a director except with the consent of

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such public company or subsidiary in general meeting.

Thus, in the instant case, Big Ben Ltd. cannot extend the time limit for repayment of outstanding balance loan amounting to ₹ 10 lakhs by another six months to Mr. T except with the consent of the Company by way of an ordinary resolution passed in a General Meeting.

(ii) Notice for calling the General Meeting of the company:

Big Ben Limited

Registered Office: _____

NOTICE is hereby given that an Extra Ordinary General Meeting of the members of the company will be held at the registered office of the Company on _____, the _____ day of _____, 2012 at 11.00 A.M. to transact the following business:

(1) To pass, with or without modification, the following resolution as an Ordinary Resolution:

"RESOLVED THAT pursuant to the provision of Section 293(1)(b) of the Companies Act, 1956, consent be and is hereby accorded to the company for extending the time for the repayment of the balance amount of ₹ 10 Lakhs advanced to Mr. T, a Director of the company, by a further period of six months ending on _____, 2012."

FOR & ON BEHALF OF THE BOARD

Dated _____ 2012

Company Secretary

Notes:

- (1) A member entitled to attend and vote at the Meeting is entitled to appoint a proxy to attend and vote instead of himself and such proxy need not be a member of the Company. Proxies in order to be valid must be deposited at least 48 hours prior to commencement of the Meeting.
- (2) Explanatory Statement pursuant to Section 173(2) of the Companies Act, 1956 is annexed hereto.

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(b) Constitution of Audit Committee:

- (i) As per section 292A of Companies Act, 1956, every public company having paid up capital of ₹ 5 crores or more must constitute a committee of Board termed as 'Audit Committee'.
- (ii) This audit committee shall consist of minimum 3 directors. Out of the total members of committee, at least two-third of the total number of members shall be those directors who are not managing or whole time directors. The committee shall elect its own Chairman. Terms of reference will be specified in writing by the Board [Section 292A(2)].
- (iii) Its composition will be disclosed in the Annual report of the company.

Course of action in case of differing with the content of the audit committee report:

- (i) As per Section 292A, a recommendations of the audit Committee on any matter relating to financial management, including the audit report, shall be binding on the Board.
- (ii) If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefore and communicate such reasons to the shareholders.
- (iii) The Chairman of the Audit Committee shall attend the Annual General Meeting(s) of the company to provide any clarifications on matters relating to Audit.

Question 6

- (a) *DAJ Ltd. engaged in the construction work issued to public certain shares. The money received was used for the construction purposes. Since the company is not in a position to pay any dividend for a long time because of the longer gestation period, the Board of Directors of the company wants to pay interest out of capital to its shareholders. Advise the Board about the conditions to be complied with as required under the provisions of the Companies Act, 1956. (8 Marks)*
- (b) *DEJY AS Company Limited incorporated in Singapore, desires to establish a place of business at Mumbai. You being a practising Chartered Accountant has been appointed by the company as a liaison officer, for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 1956, state the documents you are required to furnish on behalf of the company, on the establishment of a place of business at Mumbai. (8 Marks)*

Answer

- (a) **Power of company to pay interest out of capital in certain cases under the Companies Act, 1956:** According to the Section 208 of the Companies Act, 1956, the Board has to comply with the following conditions in order to pay interest out of the capital to its shareholders-

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- (i) Shares can be issued for the purpose of raising money, to pay the expenses that occurred in the construction work which cannot be made profitable for a lengthy period, then the company may—
 - (a) pay interest on so much of that share capital as is for the time being paid up, subject to certain conditions.
 - (b) charge the sum so paid by way of interest, to capital as part of the cost of construction of the work.
 - (ii) Such payment shall be made only when it is authorised by the articles or by a special resolution.
 - (iii) Such payment, whether authorised by the articles or by special resolution, shall be made with the previous sanction of the Central Government.
 - (iv) Before sanctioning any such payment, the Central Government may, appoint a person to inquire into, and report to the Central Government on, the circumstances of the case.
 - (v) The payment of interest shall be made only for such period as may be determined by the Central Government; and that period shall not extend beyond the close of the half-year next after the half-year during which the work has been actually completed.
 - (vi) The rate of interest shall not exceed four per cent per annum or such other rate as the Central Government may direct.
 - (vii) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.
- (b) **Documents to be furnished by foreign companies carrying on business in India:** As per Section 592 of the Companies Act, 1956 a foreign company has to furnish the following documents to the Registrar of Companies within 30 days of the establishment of the place of business in India for registration.
- (i) Certified copy of charter, statute or memorandum and articles of the company or other instruments deferring the constitution of the company. If it is not in English Language, its certified translation should be submitted.
 - (ii) Full address of the registered or principal office of the company.
 - (iii) List of directors and Secretary giving details like present and former name and surname, his usual residential address, nationality, business occupation etc.
 - (iv) The names and address of one or more persons resident in India authorized to accept on behalf of the company, service of process and any notices or other documents required to be served on the company.
 - (v) The full address of the office of the company in India which is deemed to be its principal place of business in India.

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The aforesaid documents shall be required to be filed at two places, *first* with the Registrar of the state where principal place of business (Mumbai) is situated i.e. Registrar of Maharashtra in this case, and *second* with the Registrar of New Delhi (Section 597).

Question 7

Attempt any **four**:

- (a) *BCD Exporters, New Delhi are engaged in export business and are required to realise and repatriate to India the foreign exchange arising out of export of goods by them. Advise BCD Exporters about the various exemptions from realizations and repatriation of foreign exchange as per Foreign Exchange Management Act 1999. (4 Marks)*
- (b) *Hon'ble Justice Mr HCJ, a retired High Court Judge, attained the age of 61 years on 31st December 2011. The Central government appointed him as the chairperson of the Competition Commission of India with effect from 1st January 2012. State, with reference to the provisions of the Competition Act, 2002, the term for which he may be appointed as chairperson of the Competition Commission of India. Whether he can be reappointed as such and till when he can remain as chairperson of the Competition Commission of India? (4 Marks)*
- (c) *Explain the term "Offence of Money Laundering" within the meaning of the Prevention of Money Laundering Act, 2002. State the punishment for the offence of money laundering. (4 Marks)*
- (d) *With reference to the provisions of Insurance Act, 1938 as amended by Insurance Regulatory and Development Authority Act, 1999, state the norms in respect of paid up equity capital for carrying out the business of an insurer. Also state the items that are excluded in determining the amount of paid up equity capital of an insurer under the said Acts. (4 Marks)*
- (e) *Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard? (4 Marks)*

Answer

- (a) **Exemption from realisation and repatriation of foreign exchange:** As per Section 9 of the Foreign Exchange Management Act, 1999 in certain conditions, the foreign exchange can be held or need not be repatriated to India:-
 - (i) **Possession of foreign currency** – possession of foreign currency or foreign coins upto prescribed limit by Reserve Bank of India.
 - (ii) **Foreign currency account** – Foreign currency account can be held and operated by such persons and within such limits as specified by Reserve Bank of India.

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- (iii) **Foreign currency acquired before July 1947** – Foreign exchange acquired or received before 8th July, 1947 or income arising or accruing thereon can be held outside India.
- (iv) **Gift or inheritance** – If such foreign exchange is acquired as a gift or inheritance, that exchange and income arising there from can be held as foreign exchange in India or held abroad and need not be repatriated.
- (v) **Foreign exchange acquired abroad** – Foreign exchange acquired from employment, business, trade, vocation, services honorarium, gifts, inheritance, or any other legitimate means can be held as foreign exchange in India or it need not be repatriated to India subject to limits specified by Reserve Bank of India.
- (vi) **Any other receipts**- Such other receipts in foreign exchange as specified by Reserve Bank of India.

- (b) **Term of office as Chairperson of Competition Commission of India (CCI) under the Competition Act, 2002:** According to Section 10(1) of the Competition Act, 2002, the Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment.

Provided that no Chairperson or other Member shall hold office as such after he has attained the age of sixty five years.

Based on the above provisions of the Competition Act, 2002, it can be concluded that Hon'ble retired Justice Mr. HCJ can be appointed as the Chairperson of the Competition Commission of India by the Central Government initially for a period of five years and he can also be re-appointed after his initial term of five years is over. But since he shall be attaining the age of 65 years as on 31st December, 2015 he will have to step down from the post on his attaining the age of 65 years.

- (c) **Offence of Money Laundering:** Section 2 of the Prevention of Money Laundering Act, 2002 defines the term "scheduled offence", which accordingly means –

- (i) the offences specified under Part A of the Schedule; or
- (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more.
- (iii) The offences specified under Part C of the Schedule (Amendment Act, 2009)

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

Punishment for the Offence of Money Laundering

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

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

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

- (d) **Requirement of Paid Up equity capital for insurance business:** No insurer carrying on the business of life insurance, general insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has, —
- (i) a paid-up equity capital of rupees one hundred crores, in case of a person carrying on the business of life insurance or general insurance; or
 - (ii) a paid-up equity capital of rupees two hundred crores, in case of a person carrying on exclusively the business as a re-insurer:

Items to be excluded in determining the amount of paid up equity share capital: In determining the paid-up equity capital specified above, following item must be excluded-

- (i) The deposit of 1% and 3 % of the gross premium with respect to life insurance and general insurance business in any financial year to be made by the insurer to the Reserve Bank of India.
 - (ii) In the case of re-insurance business, a deposit of sum of rupees twenty crores made by the insurer to the Reserve Bank of India.
 - (iii) Any preliminary expenses incurred in the formation of the company, and
 - (iv) Any preliminary expenses that incurred in the registration of the company
- (e) **Principles of Grammatical Interpretation and Logical Interpretation**

In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Meaning-Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas **Logical interpretation** on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court -In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather it is just or unreasonable.

However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

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