NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

DISCLAIMER

The Suggested Answers hosted in the website do not constitute the basis for evaluation of the students' answers in the examination. The answers are prepared by the Faculty of the Board of Studies with a view to assist the students in their education. While due care is taken in preparation of the answers, if any errors or omissions are noticed, the same may be brought to the attention of the Director of Studies. The Council of the Institute is not in anyway responsible for the correctness or otherwise of the answers published herein.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

PAPER-4 – CORPORATE AND ALLIED LAWS

Question No. 1 is compulsory.

*Answer any **five** from the rest*

Question 1

(a) *Mr. Ramanujam, one of the Directors in Debari Food Processing Limited was not satisfied with the performance of the company in financial matters. He requested Mr. Anandaraja, a Chartered Accountant, to inspect the books of accounts of the company on his behalf. Decide, under the provisions of the Companies Act, 1956 whether the said company can refuse to allow Mr. Anandaraja to inspect the books of accounts? (4 Marks)*

(b) *The issued, subscribed and paid-up capital of Supreme Chemicals Limited is ₹ 2 crore consisting of 20,00,000 equity shares of ₹ 10 each. The said company has 800 members. For the purpose of relief against oppression and mismanagement, a petition was submitted before the appropriate authority duly signed by 90 members holding 1,00,000 equity shares of the said company. Subsequently, 30 members, who signed the petition, withdrew their consent. Decide, under the provisions of the Companies Act, 1956 whether the said petition is maintainable? (5 Marks)*

(c) *Mr. Gopalasunderam, a Director in Fatehnagar Textiles Limited, took a loan from the company without obtaining the approval of the Central Government. Examine, under the provisions of the Companies Act, 1956 whether it is possible for him to avoid prosecution by applying to the Central Government for approval or by refunding the loan taken by him from the company. (5 Marks)*

(d) *The Securities and Exchange Board of India received serious complaints against Mr. Satyanarayan, a member of Mavli Stock Exchange. State as to what powers can be exercised by the Securities and Exchange Board of India to make enquiries and to take action in this matter, under the provisions of the Securities Contracts (Regulation) Act, 1956? (6 Marks)*

Answer

(a) Section 209 of the Companies Act, 1956, provides that the books of account and other books and papers shall be open to inspection by any director during the business hours.

The right of inspection given by this section is not so restricted that it can only be exercised personally by the director. *In Vakharia Vs Supreme General Film Exchange CO. Ltd,* it was held that a director is entitled to take inspection of accounts personally or through an agent provided that there is no reasonable objection to the person chosen and the agent undertakes not to utilize the information obtained by him for any purpose other than the purpose of his principal.

As the right of inspection is a statutory right given under this section, a director who is prevented or refused from inspection may enforce his right through court.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

As such, Mr. Ramanujam being the director in Debari Food Processing Limited, can appoint Mr. Anandaraja to inspect the books of accounts of the company.

Hence, the Debari Food Processing Limited cannot refuse to allow Mr. Anandaraja to inspect the books of accounts.

(b) As per section 399 of the Companies Act, 1956, in the case of a company having a share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:

100 members; or

1/10th of the total number of members; or

Members (including equity shareholder as well as preference shareholder) holding not less than 1/10th of the issued share capital of the company.

The shareholding pattern of the Supreme Chemicals Limited is given as follows:

₹ 2,00,00,000 equity share capital held by 800 members.

The petition alleging oppression and mismanagement has been made by the members as follows:

(a) Number of members making the petition: 90

(b) Amount of share capital held by members making the petition: ₹ 10,00,000

The petition shall be valid if it has been made by the lowest of the following:

100 members

80 members (being 1/10th of 800)

Members holding ₹ 20,00,000 share capital (being 1/10th of ₹ 2,00,00,000)

As it is evident, the petition made by 90 members meets the eligibility criteria specified under section 399; therefore, the petition is maintainable.

The consent to be given by shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by shareholder during the course of proceedings does not affect the maintainability of the petition.

Thus, such petition shall remain valid despite the fact that 30 members, who signed the petition, have withdrawn their consent subsequently.

(c) According to section 295 of the Companies Act, 1956, no public company shall make any loan to any of its directors either directly or indirectly without obtaining the previous approval of the Central Government. As the Act envisages prior approval, Central Government will not entertain any application from the company seeking approval for a loan already given to its director.

The Fatehnagar Textiles Limited has, therefore, contravened the provisions of section 295(1) and for this offence every person who is knowingly a party to this contravention

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

including Mr. Gopalasunderam, a Director in Fatehnagar Textiles Limited, to whom the loan is made shall be punishable either with fine which may extend to ₹ 50,000 or with simple imprisonment for a term which may extend to six months. [Section 295(4)]

Where any such loan has been repaid in full, no punishment by way of imprisonment shall be imposed and where the loan has been repaid in part, the maximum punishment, which may be imposed by way of imprisonment, shall be proportionately reduced.

So, by refunding the loan in full, it is possible for Mr. Gopalasunderam to avoid punishment in the form of imprisonment, but it is not possible for him to avoid prosecution and punishment in the form of fine.

(d) Disciplinary action against members of Stock Exchange: SEBI can exercise the following powers under Securities Contracts (Regulation) Act, 1956 on receipt of serious complaints against the affairs of Mr. Satyanarayan, a member of Mavli Stock Exchange.

(i) SEBI may, if it is satisfied that it is in the interest of the trade or in the public interest, by order in writing call upon the member of the stock exchange to furnish in writing information or explanation in respect of the matter under inquiry [Section 6(3)(a)].

(ii) SEBI instead of calling for information, may either appoint one or more persons to make an enquiry or direct the governing body of stock exchange to make inquiry and submit its report to SEBI [Section 6(3)(b)].

In case of adverse findings, SEBI can direct Mavli Stock Exchange to take disciplinary action against Mr. Satyanarayan, such as fine, expulsion from membership, suspension from membership for a specified period and any other penalty of a like nature not involving the payment of money. Bye-laws of the stock exchange usually provide for such punishment [Section 9(3)(b)]. Mavli Stock Exchange is under obligation to take the action as directed.

Question 2

(a) Hi-tech Engineering Limited engaged in the business of engineering construction and cement manufacturing, decided to concentrate on its core business of engineering construction and hive off (demerge) its cement business in favour of Premier Cement Limited. State the steps to be taken by Hi-tech Engineering Limited to give effect to the proposed demerger under the provisions of the Companies Act, 1956. (8 Marks)

(b) State the legal requirements to be complied with by a public company in respect of a Board Meeting.

Examine with reference to the provisions of the Companies Act, 1956 whether notice of a Board Meeting is required to be sent to the following persons:

(i) Alternative Director;

(ii) An interested Director;

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

(iii) A Director who has expressed his inability to attend a particular Board Meeting;

(iv) A Director who has gone abroad. *(8 Marks)*

Answer

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

(1) Hi-Tech Engineering Ltd., known as "Transferor Company" for this purpose, has to prepare a scheme under which its properties and liabilities in respect of cement business will be transferred to Premier Cement Ltd., known as "Transferee Company" for this purpose. Such scheme must contain the consideration for transfer, known as "Exchange Ratio".

(2) An application under Section 391(1) of the said Act must be made to Court for an order convening meetings of creditors and/or members.

(3) Notice(s) of the meeting(s) must be sent to members/creditors as per the direction of Court. Such notice must be accompanied by a statement under Section 393(1) of the said Act setting forth the terms of the compromise or arrangement and explaining its effect in general and in particular, the effect on the interests of Managerial Personnel.

(4) To hold the said meetings and pass necessary resolution approving the scheme subject to the confirmation of Court. It may be noted that the resolution must be passed by a majority in number representing 3/4th in value of the members/creditors as required under Section 391(2) of the said Act.

(5) Thereafter, Hi-Tech Engineering Ltd. is required to move to Court jointly with Premier Cement Ltd. for approval of the scheme disclosing all material facts relating to the Company [Proviso to section 391(2)]. Court as required under section 394A shall give notice to the Central Government and shall take into consideration any representation received from Central Government before passing any order on the application made to it for approval of the scheme.

(6) On receipt of Court's order, Hi-Tech Engineering Ltd. is required to file a certified copy of the order with the Registrar of Companies (ROC) for registration within 30 days after making of the order by Court [(Section 394(3)]. This is very important since the non-filing of the order with ROC would make the approval order ineffective.

(7) Lastly, to proceed to give effect to the scheme as approved by Court in the manner as directed by it.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

(b) Legal requirements to be complied with by a public company in respect of a Board Meeting:

(i) Frequency of meeting: According to Section 285 of the Companies Act, 1956, a meeting of its Board of directors shall be held at least once in every three months and at least four such meetings shall be held in every year.

(ii) Notice of meeting: According to Section 286 of the Act, notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.

(iii) Quorum for meetings: According to Section 287 of the Act, the quorum for a meeting of the Board of directors of a company shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher.

(iv) Adjourned meeting: According to Section 288 of the Act, if a meeting of the Board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or it that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

Notice of Board meeting

(i) Alternate Director: Where a director goes abroad for a period of more than 3 months and an alternate director has been appointed in his place under Section 313, the notice should be served to the alternate director as well as on the original director who is outside India for the time being although there is no legal precedence in this regard, it would be a prudent practice on strictly construing Section 286.

(ii) An Interested Director: Notice must be given to a director even though he is precluded from voting at the meeting on the business to be transacted [*John Shaw & Sons (Salford) Ltd. v Peter Shaw & John Shaw [1935] 2 KB 1132].*

(iii) A Director who has expressed his inability to attend a particular Board Meeting: If a director states that he will not be able to attend the next Board meeting, notice must be given to that director [*Re Portuguese Consolidated Coffee Mines Steel's Case 42 Ch. D. 160].*

(iv) A Director who has gone abroad: A director is entitled to a notice even though he is outside India provided he has made sufficient arrangement with the company for sending such notice to him. The right to receive notice cannot be waived. [*H.M. Ebrahim Sait v. South Indian Industrial Ltd., (1938) 8 Com Cases 308: AIR 1938 Mad 962 and Young v. Ladies Imperial Club, (1920) All ER Rep 223 (CA)].*

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

Question 3

(a) *The statutory auditors of Ghosunda Refinery Limited, did not verify the correctness of the particulars furnished in the Board's Report in respect of certain employees under Clause (2A) of Section 217 of the Companies Act, 1956. State the particulars which are required to be furnished under Clause (2A) of Section 217 of the said Act and also explain the legal position relating to verification of these particulars by the auditors of the said Company.* *(8 Marks)*

(b) *Modern Chemicals Limited, a listed company, propose to make a preferential issue of equity shares to the promoters of the Company. You are required to answer the following with reference to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009:-*

(i) What are the conditions to be complied with by the Company to give effect to the proposed preferential issue?

(ii) What is the price at which the proposed issue can be made?

(iii) What is the lock-in period in respect of shares allotted on preferential basis to promoters ? *(8 Marks)*

Answer

(a) Particulars required to be furnished under Clause (2A) of Section 217:

Sub Section (2A) of Section 217 of the Companies Act, 1956, provides that the Board's report shall also include a statement showing the name of every employee of the company who—

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than such sum as prescribed i.e. sixty lakh rupees; or

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than such sum per month as prescribed i.e. five lakh rupees; or

(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two per cent, of the equity shares of the company.

The statement shall also indicate, —

(i) whether any such employee is a relative of any director or manager of the company and if so, the name of such director, and

(ii) such other particulars as may be prescribed.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

Verification of these particulars by the auditors of the said company:

As per section 227, the auditor is required to report only on those document which are part of or annexed to the Balance sheet and statement of profit and loss. The subject matter of the auditor's report is the books of account and the financial statements including notes thereon and not the Board's Report which as per section 217 is attached to balance sheet.

Moreover, section 222 of the Act dealing with construction of reference to documents annexed to accounts also makes it clear that Board's report is attached to the annual accounts. Therefore, normally the auditor's report does not cover authentication of various matters contained in the Board's Report.

In the given case, the statutory Auditor of Ghosunda Refinery Limited did not verify the correctness of particulars furnished in the Board's report in respect to certain employees under section 217(2A) of the Act, and keeping in view the above legal provision, it can be concluded that the contention of auditor of the said company is correct.

(b) Conditions for preferential issue

72. (1) A Modern Chemicals Limited may make a preferential issue of specified securities, if:

(a) a special resolution has been passed by its shareholders;

(b) all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form;

(c) the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed;

(d) the issuer has obtained the Permanent Account Number of the proposed allottees.

Explanation: Where any person belonging to promoter(s) or the promoter group has sold his equity shares in the issuer during the six months preceding the relevant date, the promoter(s) and promoter group shall be ineligible for allotment of specified securities on preferential basis.

(2) Where any person belonging to promoter(s) or the promoter group has previously subscribed to warrants of an issuer but failed to exercise the warrants, the promoter(s) and promoter group shall be ineligible for issue of specified securities of such issuer on preferential basis for a period of one year from:

(a) the date of expiry of the tenure of the warrants due to non exercise of the option to convert; or

(b) the date of cancellation of the warrants as the case may be.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

Pricing of equity shares.

76. (1) If the equity shares of the Modern Chemicals Ltd. have been listed on a recognised stock exchange for a period of twenty six weeks or more as on the relevant date, the equity shares shall be allotted at a price not less than higher of the following:

(a) The average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during the twenty six weeks preceding the relevant date; or

(b) The average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(2) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than twenty six weeks as on the relevant date, the equity shares shall be allotted at a price not less than the higher of the following:

(a) the price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, pursuant to which the equity shares of the issuer were listed, as the case may be; or

(b) the average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during the period shares have been listed preceding the relevant date; or

(c) the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(3) Where the price of the equity shares is determined in terms of sub-regulation (2), such price shall be recomputed by the issuer on completion of twenty six weeks from the date of listing on a recognised stock exchange with reference to the average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during these twenty six weeks and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

Explanation: For the purpose of this regulation, 'stock exchange' means any of the recognised stock exchanges in which the equity shares are listed and in which the highest trading volume in respect of the equity shares of the issuer has been recorded during the preceding twenty six weeks prior to the relevant date.

Lock-in of specified securities

78. (1) The specified securities allotted on preferential basis to promoter or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to promoter or promoter group, shall be

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

locked-in for a period of three years from the date of allotment of the specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be:

Provided that not more than twenty per cent of the total capital of the issuer shall be locked-in for three years from the date of allotment:

Provided further that equity shares allotted in excess of the twenty per cent shall be locked-in for one year from the date of their allotment pursuant to exercise of options or otherwise, as the case may be.

Question 4

(a) *Mr. Kishore is a Director of AB Limited and PQ Limited. AB Limited was regular in filing the Annual Returns but did not file annual accounts for the years ended 31st March, 2009, 2010 and 2011. AB Limited did not pay interest on loans taken from a public financial institution from 1st April, 2011 and also failed to repay matured deposits taken from public on due dates from 1st April, 2012 onwards.*

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

(i) Whether Mr. Kishore is disqualified under Section 274 (1) (g) of the Companies Act, 1956 and if so; whether he can continue as a Director in AB Limited and also seeks reappointment when he retires by rotation at the Annual General Meeting of PQ Limited to be held in September, 2013?

(ii) Mr. Kishore is proposed to be appointed as Additional Director of XY Limited in June, 2013. Is he eligible to be appointed as Additional Director in XY Limited?

(8 Marks)

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

The terms of appointment are as under :

(i) Salary ₹ 1 lakh per month;

(ii) Commission, as may be decided by the Board of Directors of the company;

(iii) Perquisites;

Free Housing,

Medical reimbursement upto ₹ 10,000 per month,

Leave Travel concession for the family,

Club membership fee,

Personal Accident Insurance ₹ 10 lakh,

Gratuity, and

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

Provident Fund as per Company's policy.

You being the Secretary of the said Company, are required to draft a resolution to give effect to the above, assuming that Mr. Wahid is already the Managing Director in a public limited company. *(8 Marks)*

Answer

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

(A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after 1st April, 1999; or

(B) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividends and such failure continues for one year or more.

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

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

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

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

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

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

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

(b) Draft Board Resolution

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

(i) Salary of ₹ 1 Lakh per month

(ii) Commission

(iii) Perquisites: Free Housing, Medical reimbursement upto ₹ 10,000, Leave Travel Concession for the family, Club membership fee, Personal Accident Insurance of ₹ 10 Lakhs, Gratuity, Provident Fund etc.

Resolved further that in the event of loss or inadequacy of profits, the salary payable to him shall be subject to the limits specified in Schedule XIII.

Resolved further that the Secretary of the company be and is hereby authorised to prepare and file with the Registrar of Companies necessary Return in respect of the above appointment.

Sd/

Board of Directors

Morbani Woods Limited

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

Question 5

(a) What is meant by "misfeasance"? Who can initiate misfeasance proceedings and is there any time limit for initiating such proceedings ? Examine the extent to which the legal representatives of a deceased Director, against whom misfeasance proceedings were initiated, can be held liable under the provisions of the Companies Act, 1956.

(8 Marks)

(b) The Board of Directors of a newly incorporated Banking Company is required to file the accounts and Balance sheet. Advise the Board of Directors about the law relating to preparation, signing and filing of accounts and Balance sheet under the

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

provisions of the Banking Regulation Act, 1949. Also state the applicability of the provisions of the Companies Act, 1956 in this regard. *(8 Marks)*

Answer

(a) Misfeasance

The term 'misfeasance' has not been defined in the Companies Act, 1956. It can be considered as an act or omission in the nature of breach of trust in relation to the company which causes losses or injuring to the company. Although loss to the company has not been expressely stated in Section 543, however such 'loss' has to be implied in case of misapplication or retainer. Only such an act of misfeasance which results in the loss to the company will fall within the ambit of section 543.

Initiation of Proceeding: In the above case, proceedings may be initiated on the application of the Official Liquidator, or any creditor or contributory in a the Court who may examine into the conduct of such person, and compel him to repay or restore the money or property or make compensation to the company for misfeasance or breach of trust/misapplication etc.

Time limit: The time limit for initiating such an application is five years from the date of the order for winding up, or of the first appointment of the liquidator in winding up, or of the misfeasance/ breach of trust, which ever is longer.

The extent of liability of the Legal Representative:

In the case of death of the director, it was held by the Supreme Court that the proceedings commenced against the delinquent director of a liquidated company under section 543 can be continued against his legal representatives and the amount declared to be due in such misfeasance proceeding can be realized from the estate of the deceased on the hands of his legal representatives. The Court further held that the legal representatives would not, however, be liable for any sum beyond the value of the estate of the deceased in their hands [*Official Liquidator, Supreme Bank Ltd. V.P.A. Tendolkar (1973) 43 Comp. (Case 382)] and [Official Liquidator vs. Parthasarthy Sinha (1983) 53. Comp. Case (SC) (3c)]*.

Hence, the misfeasance proceeding can be continued against the legal representatives of deceased Director.

(b) Law related to preparation, signing and filing of Accounts and Balance Sheet:

Preparation of Accounts and Balance Sheet: According to section 29 of the Banking Regulation Act, 1949, every Banking Company incorporated in India, in respect of all business transacted by it and through its branches in India, shall prepare a balance sheet and profit & loss account as on the last working day of the Accounting year (which is April to March i.e. 31st March) in the Form "A" and "B" given in the third schedule of the Act.

Signing of Accounts and Balance Sheet: The amalgamated Balance Sheet and Profit and Loss Account should be signed by the CMD (Chairman and Managing Director) and

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

at least three Directors where there are more than three directors or where there are not more than three directors, by all the directors.

In case of banking companies incorporated outside India by the principal officer of the company in India.

Filing/ submission Balance Sheet & Profit and Loss Account: Sections 31 and 32 of the Banking Regulation Act, 1949 lay down the procedure for the filing of the accounts and balance sheet. The accounts and balance sheet along with auditor's report shall be published in prescribed manner and three copies thereof shall be furnished as returns to Reserve Bank of India (RBI) within three months from the end of the period to which they refer. The RBI may extend the period by a further period of not exceeding three months.

These three copies of accounts and balance sheet along with auditor's report shall be sent by the banking company to the Registrar of Companies, at the same time while sending the same to RBI.

Applicability of the Companies Act, 1956: The provisions of the Companies Act, 1956, relating to the balance sheet and profit and loss account of a company shall also be applicable to the profit and loss account and balance sheet of a banking company, in so far as they are not inconsistent with the provisions of the Act.

Question 6

(a) *Southern India Sugar Producer Company Limited, having paid-up capital of ₹ 5 lakh and free reserves of ₹ 3 lakh, propose to make the following loans and investments:*

(i) Loan of ₹ 2 lakh to Mr. Ram, a member of the Company, for a period of one year and a loan of ₹ 1 lakh to Mr. Shekhar, Director of the Company for a period of six months;

(ii) Investment of ₹ 3 lakh in the equity shares of XYZ Marketing Limited.

State the restrictions, if any, in this regard and also the legal requirements to be complied with by the Company under the provisions of the Companies Act, 1956. (8 Marks)

(b) *Examine in the light of the provisions of the Companies Act, 1956 whether the following companies can be considered as "Foreign Companies":-*

(i) A company incorporated outside India having a share registration office at New Delhi

(ii) A company incorporated outside India having shareholders who are all Indian citizens;

(iii) A company incorporated in India but all the shares are held by foreigners.

Also examine whether the above companies can issue Indian Depository Receipts under the provisions of the Companies Act, 1956? (8 Marks)

Answer

(a) (i) Loan, etc., to member: As per section 581ZK of the Companies Act, 1956, the

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

Board may provide financial assistance to the members of the producer company, subject to the provisions made in articles, by way of—

(a) credit facility, to any member, in connection with the business of the Producer Company, for a period not exceeding six months;

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

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

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

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

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

Thus, according to the above provision, the Southern India Sugar Producer Company Limited cannot invest an amount exceeding thirty per cent of the aggregate of its paid-up capital and free reserves i.e. ₹ 2,40,000/-(i.e., 30% of 8,00,000) in XYZ Marketing Limited. However, the company may invest in excess of the limits (more than 2,40,000) by special resolution passed in its general meeting and with prior approval of the Central Government.

(b) Foreign company: Section 591 of the Companies Act, 1956, defines foreign company as a company incorporated outside India but having a place of business in India. Accordingly, to qualify as 'foreign company' a company must have both the following features:

(1) it should be a company incorporated outside India; and

(2) it should have a place of business in India.

Also that, where not less than fifty percent of the paid up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

citizens of Indian or by one or more bodies corporate incorporated in India, or by one or more citizens of Indian and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.

Thus, according to the above provision:

(i) The meaning of 'place of business in India', is explained in section 602 which provides that the expression 'place of business' includes a share transfer or share registration office.

Thus, a company incorporated outside India having a share registration office at New- Delhi is a foreign company.

(ii) A company incorporated outside India having shareholders who are all Indian citizens

Assumption I: Having place of business in India:

A company incorporated outside India does not become foreign company within the meaning of Section 591 of the Companies Act, 1956 unless it has established a place of business in India.

If the company has established a place of business in India, it is a foreign company within the meaning of Section 591 of the Companies Act, 1956.

Here in the given case all the shares are held by Indian citizens. The status of the company continues to be a foreign company but such a company shall comply with certain conditions/provisions of the Companies Act, 1956, as may be prescribed with reference to the business carried on by it in India as if it was a company incorporated in India. Therefore, the company in this case is a foreign company.

Assumption II: Not having place of business in India:

Since in the given case, the company is incorporated outside India and not having an established place of business in India, the company is not a foreign company. Its incorporation by Indian citizens is immaterial. In order to be a foreign company it has to have a place of business in India.

(iii) A company incorporated in India is a company within the meaning of Section 3(1)(i) of the Companies Act, 1956. It cannot become a foreign company by the mere fact that all the shares of the company are held by foreigners.

Offer of Indian Depository Receipts

According to section 605A, Central Government is empowered to make Companies (Issue of Indian Depository Receipts) Rules, 2004 applicable on the companies incorporated outside India, whether the company has or has not been established or, will

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

or will not establish any place of business in India, to raise funds from India by issue of Indian Depository Receipts (IDRs).

Thus,

(i) A company incorporated outside India having a share registration office at New Delhi can issue Indian Depository Receipts.

(ii) A company incorporated outside India having shareholders who are all Indian citizens can issue Indian Depository Receipts

(iii) A company incorporated in India but all the shares are held by foreigners cannot issue Indian Depository Receipts.

Note: As the part (ii) of Question 6(b) was silent with regards to whether the place of business is in India or outside India, two assumptions were taken while answering the question. In Assumption I, the question was answered as the company was having place of business in India and in Assumption II, the question was answered as the company was not having place of business in India.

Question 7

Attempt any four:

(a) *Mr. Kishore resided in India during the Financial Year 2009-2010 for less than 182 days. He came to India on 1 April, 2010 for business. He closed down his business on 30th April, 2011 and left India on 30th June, 2011 for the purpose of employment outside India. Decide the residential status of Mr. Kishore during the Financial Years 2010-2011 and 2011-2012 under the provisions of the Foreign Exchange Management Act, 1999. (4 Marks)*

(b) *Bombay Textiles Limited and Gujarat Textiles Limited marketing their products in India propose to be amalgamated. The enterprise created as a result of the said amalgamation will have assets of value of ₹ 300 crore and turnover of ₹ 1000 crore. Examine whether the proposed amalgamation attracts the provisions of the Competition Act, 2002?(4 Marks)*

(c) *"Money Laundering" does not mean just siphoning of fund."*

Comment on this statement explaining the significance and aim of the Prevention of Money Laundering Act, 2002. (4 Marks)

(d) *Explain briefly the concept of "Securitization" under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. (4 Marks)*

(e) *Section 294 (2) of the Companies Act, 1956 provides that "the Board shall not appoint a Sole Selling Agent for any area except subject to the condition that the appointment shall cease to be valid if it is not approved by the company in the First General Meeting held after the date on which the appointment is made."*

Examine whether the procedure under the above provision is mandatory or directory?

State also the distinction between a mandatory provision and a directory provision. (4 Marks)

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

Answer

(a) According to the section 2(v) of the Foreign Exchange Management Act, 1999, 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.

In the given case, Mr. Kishore resided in India for less than 182 days during the financial year 2009-10. Hence, he cannot be considered as a "Person Resident in India" during the financial year 2010-11.

During the financial year 2010-11, Mr. Kishore resided in India for more than 182 days. Normally, he would have been resident in India during the financial year 2011-2012 but as he left India on 30th June, 2011 for the purpose of taking up employment outside India, he would cease to be resident in India from the date of his departure from India i.e. 30th June, 2011. Therefore, Kishore cannot be called a person resident in India during the entire financial year 2011-2012.

(b) Section 5 deals with combination of enterprises and persons. The amalgamation of enterprises shall be a combination of such enterprises if the enterprise created as a result of the amalgamation, as the case may be, have either in India, the assets of the value of more than ₹ 1000 crores or turnover more than ₹ 3000 crores.

Hence, in the present case, the proposed amalgamation of Bombay Textiles Limited and Gujarat Textiles Limited will not attract the provisions of the Competition Act, 2002 as they have assets of value of ₹ 300 crore and turnover of ₹ 1000 less than the specified under the provisions.

(c) "Money laundering" does not mean just siphoning of fund:

Money Laundering is a moving of illegally acquired cash through financial systems so that it appears to be legally acquired. Thus, money laundering is not just the siphoning of fund but it is the conversion of money which is illegally obtained.

Prevention of Money Laundering Act, 2002 has been enacted with aim for combating channellising of money into illegal activities.

Significance and Aim of Prevention of Money Laundering Act, 2002: The preamble to the Act provides that it aims to prevent money–laundering and to provide for confiscation of property derived from, or involved in, money–laundering and for matters connected therewith or incidental thereto.

In order to further strengthen the existing legal framework and to effectively combat money laundering, terror financing and cross-border economic offences, an Amendment Act, 2009 was passed. The new law seeks to check use of black money for financing terror activities. Financial intermediaries like full-fledged money changers, money transfer service providers and credit card operators have also been brought under the ambit of The Prevention of Money-Laundering Act. Consequently, these intermediaries, as also

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

casinos, have been brought under the reporting regime of the enforcement authorities. It also checks the misuse of promissory notes by FIIs, who would now be required to furnish all details of their source. The new law would check misuse of "proceeds of crime" be it from sale of banned narcotic substances or breach of the Unlawful Activities (Prevention) Act. The passage of the Prevention of Money Laundering (Amendment), 2009 have enabled India's entry into Financial Action Task Force (FATF), an inter-governmental body that has the mandate to combat money laundering and terrorist financing.

(d) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 came into force in June, 2002. The preamble of the Act says that this Act has been enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.

The legal framework for securitisation in India emerged to promote the setting up of asset reconstruction/securitisation companies, which are supposed to take over the Non Performing Assets (NPA) accumulated with the banks and public financial institutions.

The Act provides special powers to lenders and securitization/ asset reconstruction companies, to enable them to take over assets of borrowers without first resorting to courts.

Note: The concept of securitisation may also be explained by following two approaches:

Approach 1. Securitisation: Securitisation means acquisition of financial assets by any securitization company or reconstruction company from any originator, whether by raising of funds by such securitisation company or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise [Section 2(z)].

Banks/Financial Institution (known as originators) give loans secured by properties to original borrowers. These loans or receivables are known as financial assets [Sec.2(i)]. These financial assets are acquired by securitization company or reconstruction company (known as special purpose vehicles-SPV). The SPV issues security receipts which are distributed to investors (i.e. qualified institutional buyers). The SPV pays the bank/financial institution for the assets purchased with the proceeds from the sale of securities.

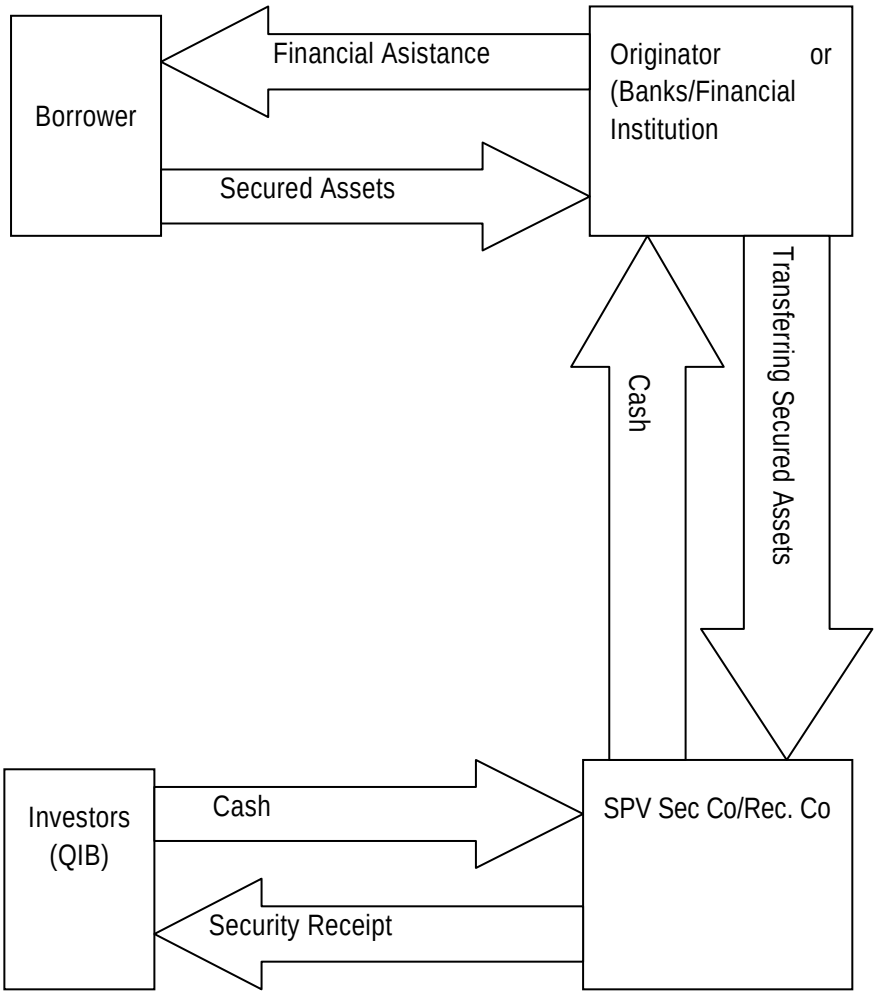
In short, securitization is a method adopted by banks/financial institutions for raising funds by way of selling receivables for money. These receivables are illiquid because these are non-performing assets.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

Approach 2. Securitisation:



(e) In respect to the part (i) of the question relating to appointment of the sole selling agent under the section 294(2) of the Companies Act, 1956, it has been decided that the appointment of a sole selling agent must be made by the company in its general meeting and such clause must be inserted as a mandatory condition in all appointments of sole selling agents; an appointment without such a clause being inserted is void ab-intio. (*Arante manufacturing Corp. vs. Bright Bills Private Ltd. 1967 Com. Case 759 and Shelagram Jhaigharia vs. National Co. Ltd. 1965 Comp. Cas. 706).* If the company in the general meeting disapproves the appointment, it shall become invalid from the date of the general meeting.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India

NOW GET UPDATES ON BY TYPING "UPDATES"
AND SENDING A MESSAGE ON AT +919831144427
PLEASE VISIT WWW.STUDENTSOFCACS.COM FOR MORE UPDATES

Distinction between a mandatory and directory provision

The distinction between a provision which is mandatory and one which is 'directory' is that when it 'mandatory', it must be strictly complied with, when it is 'directory', it would be sufficient that it is substantially complied with. Non-observance of mandatory provisions involves the consequences invalidating. But non-observance of directory provision does not entail the consequence of invalidating, whatever other consequences may occur.

DOWNLOAD OUR ANDROID APP FROM PLAYSTORE TO GET UPDATES
SEARCH ---> "STUDENTS OF CA AND CS"

© The Institute of Chartered Accountants of India