

**PAPER – 4 : CORPORATE AND ALLIED LAWS**

*Question No.1 is compulsory.*

*Answer any five questions from the remaining six questions.*

**Question 1**

- (a) *X, who does not hold any shares in his name is appointed as Director in JAM Company on 1<sup>st</sup> April, 2010. His wife holds 10,000 Equity Shares in the company in her name singly. Certain members of the company objects to X' appointment on the ground that since he does not hold any shares in his own name, his appointment is violative of the provisions of the Companies' Act, 1956. Articles of the Company are silent on the issue of holding any shares by a Director.*

*Examine the provisions of the Act and decide*

- (i) *Whether contention of the members is tenable?*
- (ii) *Whether X wife's shareholding in the company can be the ground for 'X' continuation as a director in the company?*
- (iii) *What would be your answer in case 'X' is one of the subscribers of the Memorandum of Association? (5 Marks)*
- (b) *A is the Director of M & Co. Ltd. A has borrowed Rs. 50/- lacs on reasonable terms from X for company's benefit and business. A has no power to borrow. What will be the legal position? Please explain. (5 Marks)*
- (c) *The Central Govt. has formed its opinion on certain grounds that the recognition granted to a Stock-Exchange be withdrawn. Examining the provisions of the Securities (Contracts) Regulation Act, 1956, explain the procedure that must be followed by the Central Govt. to give effect to the above. Also state whether any such withdrawal of recognition shall affect the validity of the contracts already entered into by Stock-Exchange, before withdrawal of recognition. (5 Marks)*
- (d) *A is the Auditor of B and Co. Ltd. Board of Directors decided to remove A on certain grounds. Please indicate what procedure is to be followed to remove A? Advise the Board. (5 Marks)*

**Answer**

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

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- (ii) the nominal value of the qualification shares must not exceed Rs. 5,000 after his appointment
- (iii) share warrants will not count for purposes of share qualification.

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

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

- (i) Contention of members shall not be tenable, for the reasons stated above (i.e. provisions of the Act).
  - (ii) His wife's holding of shares shall not be the qualification for the director. If the Articles are silent, the director need not hold any shares. Articles may provide that directors need not hold any qualification shares.
  - (iii) If he is one of the subscribers to the memorandum, he need not hold the Qualification shares. However, as a subscriber to a Memorandum he has to take at least a share and that share entitles him to qualify as a director. Therefore, he can continue as a director in the given case.
- (b) Money has been borrowed and used for the benefit of the company and its legitimate business purposes. Therefore, the company cannot repudiate the liability on the ground that the director 'A' has no power to borrow. (*LTR. Practice (Bombay) vs E.D.SASSR & Co. (1936) 6 Comp Cases 90*).

In light of the above, company itself would be liable to pay. 'A' a director stands in a fiduciary relationship with the company (*City Equitable Insurance Co (1925) Ch 407*)

- (c) The Central Government by virtue of powers as conferred upon it under Section 5 of the Securities Contracts (Regulation) Act, 1956, may withdraw the recognition after serving due notice on the governing Board of the Stock Exchange. Withdrawal however will not affect the validity of contracts entered into before the date of withdrawal of notification (sub-section 1).

Sub-section (2) provides that where the recognised stock exchange has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-section (1) of Section 4B within the specified time therefore or the scheme has been rejected by the Securities Exchange Board of India under sub-section (5) of Section 4B, the recognition granted to such stock exchange under Section 4, shall, notwithstanding anything to the contrary contained in this Act, stand withdrawn and the Central Government shall publish by notification in the Official Gazette, such withdrawal of recognition.

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Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Securities Exchange Board of India may, after consultation with the stock exchange, make such provisions as it deems fit in the order rejecting the scheme published in the Official Gazette under sub-section (5) of Section 4B.

- (d) Section 225 of the Companies Act, 1956 prescribes certain procedure for removal of auditors. The Board shall be advised as follows:
- (i) Special Notice shall be required for a Resolution at an annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed.
  - (ii) On receipt of notice of such a resolution the company shall forthwith send a copy thereof to the retiring auditor.
  - (iii) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so:
    - (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and
    - (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representations by the company;

If a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting unless Central Government directs otherwise.

However, a resolution for removal of an auditor can be passed in the general meeting only after obtaining the prior approval of the Central Government in this behalf. (Section 224(7)).

**Question 2**

- (a) *Certain Members of MDV Company Limited having share capital feel that the affairs of the company are being mismanaged by Directors. Members therefore, decide to move the Company Law Board, complaining the mismanagement of company affairs by Directors of the Company. Examine the provisions of the Companies' Act, 1956 and state*
- (i) *Whether members are entitled to complain the Company Law Board.*
  - (ii) *Whether the following acts of the Board, of Directors amount to mismanagement:*
    - (A) *Continuation of Directors in their office after expiry of their tenure and infighting continues among them.*

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(B) *Non-declaration of dividend when it does not lead to devaluation of shares.*

(8 Marks)

- (b) *XYZ Ltd. while preparing the Balance Sheet and Profit and Loss Account for the financial year ended 31st March, 2010 did not comply with the Accounting Standards. State the consequences that follow in case of Non-compliance.* (8 Marks)

**Answer**

- (a) Section 398 of the Companies Act, 1956 provides that a requisite number of members of the company as laid down in Section 399 may apply to Company Law Board for appropriate relief on the ground of mismanagement of the company.

**Conditions Precedent:**

Section 398 can be invoked in either of the two circumstances:

- (a) that affairs of the company are being conducted in a manner prejudicial to the interests of the company [Section 398(1)(a)]; or
- (b) that a material change has taken place in the management or control of the company and as a consequence the affairs of the company may be conducted in a manner prejudicial to the public interest or in a manner prejudicial to the interests of the company [Section 398(1)(b)].

Considering the above, the questions as asked can be answered as under:

1. Continuation of directors in their office after the expiry of their term and infighting among them has been held to be the act of mismanagement. (*Ranjan Dutta vs. Bhol Nath Paper House Ltd. (1983)*).
  2. Non-declaration of dividend when it does not lead to devaluation of shares is not an act of mismanagement. (*V.J. Thomas Vettom vs. Kuttanad Rubber Co. Ltd. (1984)*).
- (b) Where the Profit and Loss Account and the Balance sheet of the company do not comply with the Accounting Standards read with section VI and Section 211 of the Companies Act, 1956, such companies shall disclose in its Profit and Loss account and Balance Sheet, the following:
- (i) the deviation from the accounting standards.
  - (ii) the reasons for such deviations; and
  - (iii) the financial effect, if any, arising due to such deviation.

If any such person as is referred to in sub-section (6) of Section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to 6 months. or with fine which extend to Rs. 10,000 or with both.

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**Question 3**

- (a) X, a Director of MJV Ltd., was appointed on 1st April, 2009, one of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule XIII. For the financial year ended 31<sup>st</sup> March, 2010, the company suffered heavy losses. The company was not in a position to pay any remuneration but he was paid Rs. 50 lacs for the year, as paid to other directors. The effective capital of the company is Rs.150 crores. Referring to the provisions of Companies Act, 1956, as contained in Schedule XIII, examine the validity of the above payment of remuneration to X. (8 Marks)
- (b) Under the provisions of the Companies Act, 1956, examine the validity of the following appointments made by Board of VMR Ltd.
- (i) ABC Ltd. is a subsidiary company of VMR Ltd. in which Y is a Director. Y has been appointed as Manager - Research & Development in V.M.R. Ltd. on a monthly salary of Rs. 2 lacs per month with effect from 1<sup>st</sup> April, 2010.
- (ii) What would be your answer in case VMR Ltd. is a subsidiary of ABC Ltd? (8 Marks)

**Answer**

- (a) Where in any financial year during the currency of tenure of the managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to a managerial person, by way of salary, dearness allowance, perquisites and any other allowance, not exceeding ceiling limit of Rs. 24,00,000 per annum or Rs. 2 lacs per month calculated on the scale as given in Schedule XIII of the Companies Act, 1956.
- In the given case, the effective capital of the company is Rs. 150 crores. As per the scale given in the Schedule XIII monthly remuneration payable should not exceed Rs. 2,00,000 (for effective Capital Rs. 100 crores or more). The remuneration given to X is Rs. 50 lacs for the whole Year, which is more than the ceiling. Therefore, payment of Rs. 50 lacs is not in order.
- (b) According to Section 314(1) of the Companies Act, 1956, except with the consent of the company accorded by a special resolution-
- (a) no director of a company shall hold any office or place of profit, and
- (b) no partner or relative of such director, no firm in which such director, or a relative of such director, is a partner, no private company of which such director is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a total monthly remuneration of such sum as may be prescribed, except that of managing director or manager, banker or trustee for the holders of debentures of the company,-
- (i) under the company; or
- (ii) under any subsidiary of the company unless the remuneration received from such subsidiary in respect of such office or place of profit is paid over to the

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From the wordings of the question it is not very clear whether 'Y' is director in ABC Ltd. or in VMR Ltd. The question can be answered on any of the following two assumptions viz.

- (1) That Y is the director in VMR Ltd.
- (2) Y is the director in ABC Ltd.

If Y is the director in VMR Ltd. then answers to both sub questions (i) and (ii) remain the same, as a director of a company is appointed in the same company to the office of profit. Therefore, Section 314(1) is attracted in both the cases, and special resolution is required.

**Alternative:**

Y is a director of ABC Ltd. Since the appointment is made in VMR Ltd. the status of VMR is relevant. In the first part of the question VMR Ltd. is the holding company. Section 314(1) is applicable only to a director of a holding company being appointed to an office of profit in subsidiary company. Here a director of a subsidiary company i.e. ABC Ltd. is appointed to an office of profit in the holding company i.e. VMR Ltd. In such a case Section 314(1) is not attracted.

**IIInd Part: Q.3 (b) (ii):**

Here VMR Ltd. is the subsidiary. Since the director of a holding company is holding an office of profit in a subsidiary hence, Section 314(1) is attracted unless the entire remuneration received by Y is paid back to either of the company, special resolution is required.

When a director of one company is appointed to an office of profit to another company, the relationship between these two companies becomes relevant. Section 314(1) is attracted only if the director of a holding company is appointed to an office of profit in its subsidiary. If the director of a subsidiary company is appointed to an office of profit in its holding company, Section 314(1) is not applicable.

**Question 4**

- (a) *In ABC Ltd. three Directors were to be appointed. The item was included in agenda for the Annual General Meeting scheduled on 30th September, 2010, under the category of 'Ordinary Business'. All the three persons as proposed by the Board of Directors were elected as Directors of the company by passing a 'single resolution' avoiding the repetition (multiplicity) of resolution. After the three directors joined the Board, certain members objected to their appointment and the resolution. Examine the provisions of Companies' Act, 1956 and decide*
- (i) *Whether the contention of the members shall be tenable and whether both the appointment of Directors and the 'single resolution' passed at the Company's Annual General Meeting shall be void.*
  - (ii) *What would be your answer in case the company in question is an "Association not for Profit" incorporated under Section 25 of the Companies Act, 1956. (10 Marks)*

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- (b) *In relation to winding up of a company incorporated under the Companies' Act 1956; explain clearly the meaning of the term 'overriding preferential payments'. Examine the provisions of the Companies Act and decide whether the following debts of a company under the winding up shall be 'Preferential payments' and shall be paid in priority to the claim of unsecured creditors:*
- (a) *Wages amounting to Rs. 30,000/- (Rupees Thirty thousand) only of an employee for services rendered for a period of 8 months within the preceding 12 months next before the relevant date.*
  - (b) *Rs. 1 lac due to an employee from Provident Fund and 50,000/- towards gratuity.*
  - (c) *Rs. 20,000/- payable by the company on account of expenses incurred in respect of investigation held under Section 235 of the Companies' Act, 1956. (8 Marks)*

**Answer**

- (a) The matter of appointment of directors at the general meeting has been correctly slated in the agenda as the ordinary business to be transacted at the general meeting. But in accordance with the provisions of the Companies Act, 1956 as contained in Section 263 at a general meeting of a public company or of a private company which is a subsidiary of a public company, a motion shall not be made for the appointment of two or more persons as directors of the company by a single resolution unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it. Any resolution moved in contravention of sub-section (1) shall be void, whether or not objection was taken at the time to its being so moved. However, Government and companies incorporated under Section 25, i.e. associations not for profit have been exempted from the above.

**Answer to Problems:**

1. Taking into account the above, the contention of the members shall be tenable. Each director has to be appointed by way of a separate resolution.
  2. In the second case since the company is an association not for profit under section 25 of the Companies Act, 1956 the above provisions do not apply.
- (b) **OVERRIDING PREFERENTIAL PAYMENTS:**

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

- (a) Wages amounting to Rs. 30,000, of an employee for services rendered for a period of 8 months within the preceding 12 months next before the relevant date.

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All wages and salaries of an employee for service rendered for a period not exceeding 4 months within the preceding 12 months next before the relevant date, but not Exceeding Rs. 20,000 in anyone case. In the given case, it is not a preferential payment. Only a part of it shall be the preferential payment.

- (b) Rs. 1 lac due to an employee from provident fund and Rs. 50,000 towards gratuity.

All sums due to any employee from any fund including a provident, pension or a Gratuity for the welfare of the employees, maintained by the company are the preferential Payment. Therefore in the given case both the sums i.e. Rs. 1 lac and Rs. 50,000 are the preferential payments.

- (C) Rs. 20,000 payable by a company on account of expenses incurred in respect of investigation held under Section 235 of the Companies Act, 1956.

Expenses payable by any company in respect of an investigation held under Section 235 and 237 are preferential payments. In the given case Rs. 20,000 payable by the company on account of expenses incurred in respect of investigation are preferential payments.

**Question 5**

- (a) *As required under the provisions of the Companies Act, 1956, as amended in 2000, a company incorporated under the Act has to include in the Report of Board of Directors a 'Directors Responsibility Statement'. Directors of the company seek your advise about the matters to be included in the statement. Advise. (8 Marks)*
- (b) *ABC Company Ltd. an unlisted company, decided to offer Equity Shares through Initial Public issue. Under the provisions of SEBI Act, 1992, the company is required to file draft prospectus and other documents with SEBI and get the documents registered with the Registrar of Companies. Board of Directors of the company seek your advice about the conditions to be complied for the initial public offer (I.P.O.). You being a practicing Chartered Accountant, advise the Board. (8 Marks)*

**Answer**

- (a) **Directors' Responsibility Statement**

Section 217 of the Companies Act, 1956 deals with the Report of Board of Directors to be placed before the general meeting. A new sub-section (2AA) was added by the Companies (Amendment) Act, 2000 to provide that the Report shall also include a Directors' Responsibility Statement as under:

- (i) that the applicable accounting standards have been followed in preparing the Annual accounts. If there is material departure, explanation for the same should be given.
- (ii) that the directors have selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent So as to give a true and fair view of the state of affairs of the company while

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- (iii) that the Directors have taken proper and sufficient care:
- for maintenance of adequate accounting records as required by the Act,
  - for safeguarding the assets of the company, and
  - for preventing and detecting fraud and other irregularities.
- (iv) that the directors have prepared the annual accounts on a going concern basis.
- (b) An issuer making a public issue shall satisfy the conditions as stated below on the date of filing draft offer document with the SEBI and also as on the date of registering the offer document with the Registrar of Companies. Such an issuer company make an IPO, if:
- It has net tangible assets of at least Rs. 3 crores in each of the preceding three full years of 12 months each, of which not more than 50% net held in monetary assets.  
Provided that if more than 50% of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project;
  - It has a track record of distributable profits in terms of Section 205 of the Companies Act, 1956, for at least 3 out of the immediately preceding 5 years; Provided that extraordinary items shall not be considered for calculating distributable profits.
  - It has a net worth of at least Rs. 1 crore in each of the preceding three full years.
  - The aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed 5 times its pre-issue net worth as per the audited balance sheet of the preceding year.
  - If it has changed its name within the last one year, at least 50% of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

**Question 6**

- (a) *The Board of Directors of VDV Ltd., a banking 'company incorporated in, India, for the accounting year ended 31-3-2010 transferred 15% of its net profit to its Reserve Fund. Certain shareholders of the company objects to the above act of the Board of Directors on the ground that it is violative of the provisions, of the Banking Regulation Act, 1949. Examine the provision of Banking' Act and decide:*
- Whether contention of the Shareholders is tenable.*
  - Would your answer be still the same in case the Board of Directors transfer 30% of the company's net profits to Reserve Fund? (8 Marks)*
- (b) *The Board of Directors of DJA Ltd. seek your advice about the procedure to be followed for 'Electronic filing and Authentication of Documents' with the Registrar of Companies, Mumbai. Advise the Board about the procedure to be followed in this regard and explain the manner in which the 'E' filing is regulated by the Central Govt. (8 Marks)*

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**Answer**

(a) In accordance with the provisions of the Banking Regulation Act, 1949 as contained in Section 17, every banking company incorporated in India must create a reserve fund and transfer a sum equal to not less than 20% of its net profits. However, Central Government is empowered to exempt from this requirement on the recommendation of the RBI. Such exemption will be allowed only:

1. when the amount in the reserve fund and the share premium account are equal to the paid-up share capital of the banking company.
2. when the Central Government feels that its paid-up share capital and reserves are adequate to safeguard the interest of the depositors.

If the banking company appropriates any sum from the Reserve Fund or the Share Premium account, it must be reported to RBI within 21 days explaining the circumstances leading to such appropriation.

Therefore, applying the above provisions:

1. Contention of share holders shall be tenable since the %age of transfer of profits to Reserve Fund is lower than statutory limits, as provided in the Act.
2. In the second case the contention of shareholders shall not be tenable, since 30% is more than the minimum statutory limit of 20% of the net profits.

(b) Procedure:

1. When the business or the registered users access the My MCA portal, they enter their username and authentication details – Password/ Digital Certificate.
2. The user will be shown a list of eForms category-wise under eForms tab.
3. At any time, the users can read the related instruction kit, available under Help menu, to authorized themselves with the procedures.
4. The users can then fill the appropriate eForm for the service required. There is an option of pre-fill facility in the eForms, where the static details such as name and address of the company will be pre-filled by the system automatically on entering the Corporate Identity Number (CIN).
5. The users attach the necessary documents to the eForm.
6. The users may avail the pre-scrutiny service of the eForm. The documents will be verified (pre-scrutinised) by the system. In case of any inadequacies, for example, if a mandatory column in the eForm is not filled in, the user will be asked to rectify before the document is ready for execution (signature).
7. The applicant or a representative of the applicant will then submit the duly signed documents electronically through Digital Signatures.
8. The system will calculate the fee, including late payment fees, if applicable.

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9. Payments will have to be made through appropriate mechanisms – electronic (credit card, Internet banking) or traditional means (at the bank counter).
  - (a) Electronic payments can be made at the Virtual Front Office (VFO).
  - (b) If the user selects the traditional payment option, the system will generate a pre-filled challan in the prescribed format. Traditional payments through cash, cheques can be done at the designated network of banks using the system generated challan. There will be five banks with estimated 200 branches authorized for accepting challan payments.
10. The payment will be exclusively confirmed for all online (Internet) payment transactions using payment gateways.
11. Acceptance or rejection of any transaction will be explicitly communicated to the applicant (including facility to print a receipt for successful transactions).
12. MCA 21 will provide a unique transaction number, which can be used by the applicant for enquiring status pertaining to that transaction.
13. Filing will be complete only when the necessary payments are made.
14. In case of a rejection, helpful remedial tips will be provided to the applicant.
15. The applicants will be provided an acknowledgement through e-mail or alternatively they can check the MCA portal.

**Question 7**

*Attempt any four:*

- (a) *Examine the provisions of Foreign Exchange Management Act, 2002 and advise whether the approval of Central Govt. is needed in the following cases:*
  - (i) *X wants to remit certain sum of money out of lottery winnings.*
  - (ii) *Payment of Royalty in case it is 10% of local sales and 20% of exports and the lump sum payment of U.S. \$ 3 millions. (4 Marks)*
- (b) *What are the agreements prohibited under Section 3(1) of the Competition Act, 2002? (4 Marks)*
- (c) *Under provisions of Companies' Act, 1956, relating to producer company, examine whether the office of director of such company shall fall vacant in the following circumstances:*
  - (i) *X a Director of ABC Ltd., a producer company has made a default in payment of loan taken from a company and default continues for 60 days.*
  - (ii) *Z a Director of the above company could not call the Annual General Meeting for the company due to some natural calamity occurred three days before the Schedule date. (4 Marks)*

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- (d) Explain the Rule of "Reasonable construction under the interpretation of Statute, Deeds etc" (4 Marks)
- (e) Explain Asset Reconstruction, Financial Assets under the Securitization and Reconstruction of Financial Assets Enforcement of Security and Interest Act 2002.(4 Marks)

**Answer**

- (a) (i) X wants to remit certain sum of money out of lottery winnings: It is a current account transaction and prohibited as per Schedule I to the Foreign Exchange Management (Current Account Transactions) Rules, 2000.
- (ii) Payment of certain sum of money under the technical collaborate agreement is to be remitted :The payment of 10% of local sales and 20% of export sales and lump sum payment of US \$3 million is beyond the permissible limits. Hence, Central Government's prior approval is needed.
- (a) Permissible limit 5% of local sales
- (b) Permissible limit of 8% of export sales
- (c) Lump sum payment limit is US \$ 2 million.
- (b) Agreements at different stage in different market are prohibited under section 3(1) of the Competition Act, 2002. Any agreement amongst enterprises or persons at different stage of the production chain in different markets, in respect of production, supply, distribution, storage, sale etc. shall be a void agreement likely to cause an appreciable adverse effect on Competition in India including:
- (1) Tie-in arrangement means any agreement requiring a purchaser of good, as a condition of such purchase some other good;
- (2) Exclusive supply agreement means any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;
- (3) Exclusive distribution agreement means any agreement to limit restrict or withhold the output or supply of goods or allocate any area or market for the disposal or sale of the goods;
- (4) Refusal to deal means any agreement which restrict, or is likely to restrict by any method the persons or class to whom goods are sold or from whom goods are bought;
- (5) Resale price maintenance means to sell goods on condition that the price to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.
- (c) Producer Company - Vacation of Office of a Director:
1. According to provisions of Companies Act, 1956, as contained in Section 581Q, if the producer company in which a director has made a default in repayment of any

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such default continues for 90 days, the office of such director shall become vacant. In the given case the default on the part of X, the director continues for less than 90 (i.e. *only* 60 days) days, the office of director shall not fall vacant.

2. The office of director of a producer company shall become Vacant if the Annual General Meeting or extraordinary general meeting of the producer company, in which he is a director, is not called in accordance with the provisions of this Act except due to natural calamity or such other reason. In the given case since the Annual General Meeting could not be held due to some natural calamity, the office of Z, the director shall not fall vacant. This is an exception.
- (d) The rule of reasonable construction lay down that the words of a statute must be construed 'ut us maquis valeat quampareat' meaning thereby that words of statute must be construed so as to a sensible meaning. Generally the words or phrases of a statute are to be given their ordinary meaning. In the case of *Dr. A.L. Mudaliar vs. LIC of India (1963) (SC)*, it was held that the memorandum of Association of a company must be read fairly and its import derived from a reasonable interpretation of the language which it employs. Further, in order to determine whether a transaction is intra vires the objects of a company, the objects clause should be reasonably construed; neither with rigidity nor with laxity. [*Waman Lal Chotanlal Parekh vs. Scindia Steam Navigation Co. Ltd.(1944)*].

If the court finds that giving a plain meaning to the words will not be a fair or reasonable construction, it becomes the duty of the court to depart from the dictionary meaning and adopt the construction which will advance the remedy and suppress the mischief provided the court does not have to resort to conjecture or surmise. A reasonable construction will be adopted in accordance with the policy and object of the statute.

(e) **Asset Reconstruction:**

'Asset Reconstruction' means acquisition by any securitization company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realization of such financial assistance. (Section 2(b))

**Financial Assets**

Financial Assets' means debt or receivables and includes:

- a claim to any debt or receivables or part thereof, whether secured or unsecured; or
- any debt or receivables secured by mortgage of, or charge on, immovable property; or a mortgage, charge, hypothecation or pledge of movable property; or
- any right or interest in the security, whether full or part underlying such debt or receivables; or
- any beneficial interest in property, whether movable or immovable or in such debt, receivables, whether such interest is existing, future accruing, conditional or contingent; or any financial assistance. (Section 2(1)).

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