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PAPER-4 – CORPORATE AND ALLIED LAWS

Question No. 1 is compulsory

Attempt any five from the remaining six questions

Question 1

- (a) *The paid up capital of Western Zone Insurance Limited is ₹ 7 crore. Point out whether the said company is required to file Balance Sheets and Profit and Loss Account along with Director's and Auditor's Report for the year 2011-12 by using the XBRL taxonomy under the Companies Act, 1956?* (4 Marks)
- (b) *The Board of Directors of Nimbahera Chemicals Limited propose to transfer more than 10% of the profits of the company to the reserves for the current year. Advise the Board of Directors of the said company explaining the relevant provisions of the Companies Act, 1956 and the rules thereunder.* (5 Marks)
- (c) *A meeting of members of Jaora Agricultural Equipments, Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 200 members holding 5,00,000 shares. 70 members holding 4,00,000 shares in the aggregate voted for the scheme. 120 members holding 90,000 shares in aggregate voted against the scheme. 10 members holding 10,000 shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 1956 whether the scheme was approved by the requisite majority?* (5 Marks)
- (d) *The Securities and Exchange Board of India issued an order against a stock broker to redress the grievances of the investors within the stipulated time. The stock broker failed to do so, which is an offence under the provisions of the Securities Contracts (Regulation) Act, 1956. Decide:*
- (i) *Whether the offence committed by the stock broker is compoundable? If so, by whom?*
- (ii) *Whether this offence can be compounded after institution of proceedings against the stock broker?* (6 Marks)

Answer

- (a) The Ministry of Corporate Affairs has mandated certain class of companies to file Balance Sheets and Profit and Loss Account along with Director's and Auditor's Report for the year 2010-11 onwards by using XBRL taxonomy. The following classes of companies have to file the Financial Statements in XBRL Form only from the year 2010-2011:-
- (i) All companies listed in India and their Indian subsidiaries; or
- (ii) All companies having a paid up capital ₹ 5 Crore and above, or

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(iii) All companies having a turnover of ₹ 100 crore and above.

However banking companies, insurance companies, power companies and Non Banking Financial Companies (NBFCs) are exempted for XBRL filing.

Thus, in the instant case, Western Zone Insurance Limited is an insurance company and is not required to file Balance Sheets and Profit and Loss Account along with Director's and Auditor's Report for the year 2011-12 by using the XBRL taxonomy.

(b) A company can make a transfer of more than 10% to reserves provided it ensures the minimum distribution specified in Rule 3 of the Companies (Transfer of Profits to Reserves) Rules, 1975.

(i) The minimum distribution is the rate of dividend equal to the average of the rates of dividend for the last 3 financial years.

(ii) Where bonus shares have been issued during the financial year, minimum distribution would be the average of the amount of dividend for the last three financial years.

(iii) Where, however, the net profits after tax for the financial year are lower by 20% or more than the average net profits after tax for the last two financial years, it will not be necessary to ensure the minimum distribution for making a higher transfer to reserve.

Hence, the Board of Directors of Nimbahera Chemicals Limited may follow the above Rules accordingly to transfer more than 10% of the profits of the company to the reserves for the current year.

(c) **Compromise or Arrangement:** According to sub-section (2) of the section 391 of the Companies Act, 1956, the scheme of compromise and arrangement must be approved by a resolution passed with a majority in number representing three-fourths in value of the creditors, or members, or class of members, as the case may be, present and voting either in person or, by proxy.

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case 200 members attended the meeting, but only 190 members voted at the meeting. As 70 members voted in favour of the scheme the requirement relating to majority in number (i.e. 95) is not satisfied.

190 members who participated in the meeting held 4,90,000 shares, three-fourth of which works out to 3,67,500 while 70 members who voted for the scheme held 4,00,000 shares. The majority representing three-fourths in value is satisfied.

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Thus, in the instant case, the scheme of compromise and arrangement of Jaora Agricultural Equipments Limited is not approved as though the value of shares voting in favour is significantly more, the number of members voting in favour do not exceed the number of members voting against.

- (d) According to Section 23C of the Securities Contracts (Regulation) Act, 1956, if any stock broker or sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by the Securities and Exchange Board of India or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by the Securities and Exchange Board of India or a recognised stock exchange, he or it shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

- (i) **Composition of certain offences:** According to Section 23N of the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under Securities Contracts (Regulation) Act, 1956, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

Thus, in the instant case, offence committed by the stock broker is compoundable as he is punishable with fine only as provided under section 23C.

- (ii) Yes, this offence can be compounded after institution of proceedings against the stock broker as it is clearly stated under Section 23N.

Question 2

- (a) *Neemuch Pharma Limited having an "Effective Capital" of ₹ 4 crore as on 31st March, 2012 raised ₹ 2 crore by way of issue of right shares in May, 2012 during the current Financial Year 2012-2013. The company is managed by Mr. Chandrasekhar, the Managing Director, and he is getting a minimum remuneration of ₹ 80,000 per month. The company proposes to appoint two whole-time Directors in July, 2012 on a consolidated minimum salary of ₹ 60,000 per month to each of them.*

What is the "Effective Capital" for the purpose of determining the minimum remuneration payable to the proposed Whole-time Directors? State the requirements to be complied with under Schedule XIII to the Companies Act, 1956 to give effect to the proposed appointments. (8 Marks)

- (b) *Pipliya Powders Limited has four Directors. A Board meeting was convened. It was attended by two Directors only and they appointed Mr. Soorajbhan who was related to both of them, as an Additional Director. Decide, whether the said appointment is valid under the provisions of the Companies Act, 1956?*

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Draft a "Board Resolution" for appointment of a person as an Additional Director in a public company. (8 Marks)

Answer

- (a) **Effective Capital:** Effective Capital means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account, reserves and surplus, long term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short term arrangements) as reduced by the aggregate of any investments (except in the case of investment by an investment company whose principal business is acquisition of shares, stock debentures or other securities), accumulated losses and preliminary expenses not written off.

Appointment of whole-time directors: Neemuch Pharma Limited proposes to appoint two whole-time Directors in July, 2012 on a consolidated minimum salary of ₹ 60,000 per month to each of them. According to Explanation II (b) (of Schedule XIII), the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which appointment is made. In this case, the effective capital on 31st March, 2012 (i.e. the last date of the preceding financial year) is ₹ 4 crores. The right issue of shares in May, 2012 is not relevant here for the purpose of ascertaining effective capital.

According to Schedule XIII, Part II, Section II (A), if the effective capital is ₹ 1 crore or more but less than ₹ 5 crores, monthly remuneration payable shall not exceed ₹ 1,00,000. This ceiling shall apply for each Managing Director and/or whole-time director. In the given case, the proposed minimum remuneration for each of the whole time directors is ₹ 60,000 p.m. and also Mr. Chandrasekhar, the existing Managing Director is only ₹ 80,000 p.m. i.e. within the ceiling laid down above.

Hence the following steps are to be taken to comply with the requirements under section 269 read with Schedule XIII.

- (i) If there is no remuneration committee, remuneration committee must be formed consisting of at least 3 non executive independent directors including nominee directors, if any [explanation (iv)].
- (ii) The remuneration payable to two whole time Directors must be approved by a resolution passed by the remuneration committee.
- (iii) Board meeting must be convened to appoint two whole time Directors as additional directors, if they are not directors and later on appoint them as whole-time directors on a consolidated salary of ₹ 60,000 p.m.
- (iv) A return in the prescribed form (Form 25C) must be filed with Registrar of Companies within 90 days from the date of such appointment. The form must be certified by the auditor of the company or the secretary of the company or by a

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secretary in whole-time practice, if there is no secretary. They must certify that the requirements of Schedules XIII have been complied with.

- (v) The appointment of two whole time directors and remuneration payable to them must be approved by the company in general meeting by an ordinary resolution [Schedule XIII, part III]. There is no need to file Form No. 25C once again after the general meeting at which the appointment is approved.
- (b) Section 300 of the Companies Act, 1956, provides that a director shall not take part in the discussion of or vote on any contract or arrangement entered into or to be entered into by or on behalf of the company if he is in anyway whether directly or indirectly concerned or interested in the contract or arrangement. The Department of Company Affairs (Now, Ministry of Corporate Affairs) has clarified that the word interested as used in the section should be given a restrictive interpretation and thus excludes a director who has no pecuniary interest. Accordingly, the relationship of the director with the contracting party will not *per se* make the director concerned or interested in the contract or arrangement.

The Madras High Court has decided in the case of *Madras Tube Co. Ltd. vs. Hari Krishan Somani* that although appointment as director does not come within the scope of the expression 'contract' because the position of a director may be conferred on a person by any method other than contract, became interested directors. Without them there was no independent quorum.

Later in the case of *Shailesh Harilal Shah vs. Matushree Textiles Ltd.*, the Bombay High court, came to the conclusion that the appointment as an additional director of a person who is related to a director does not violate the requirement of Section 300(1) because the position of a director may be conferred on a person by any method other than contract but it would amount to an arrangement. The attending directors, therefore, became interested directors. Without them there was no independent quorum.

Thus, in the instant case, appointment of Mr. Soorajbhan as an Additional Director in Pipliya Powders Limited is not valid.

Draft Board Resolution

"Resolved that pursuant to the Articles of Association of the company and Section 260 of the Companies Act, 1956, Mr. ___ be and is hereby appointed as an additional director of the company with effect from _____ to hold office up to date of the next annual general meeting of the company.

Resolved further that Mr. _____ who is appointed as an additional director will enjoy the same powers and rights as other directors.

Resolved further that Mr. _____ Secretary of the company be and is hereby authorized to electronically file necessary returns with the Registrar of Companies by putting his digital signature and to do all other necessary things required under the Act."

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Question 3

- (a) Examine the validity of the following appointments with reference to the provisions of the Companies Act, 1956:
- Yashodharman Granites Limited reappointed Suresh & Company, a firm of Chartered Accountants, as auditors of the company at the Annual General Meeting held on 30th September, 2011. The wife of one of the partners of Suresh & Company acquired large number of equity shares in Yashodharman Granites Limited on 5th October, 2011. But Suresh & Company continue to function as statutory auditors of the company.
 - Dalanda Cement Limited appointed CA Naresh as statutory auditor of the company at the Annual General Meeting held on 30th September, 2010. The next Annual General Meeting was held on 30th September, 2011 but it was adjourned to 30th November, 2011 for consideration of the accounts for the year ended 31st March, 2011. CA Naresh continued to function as statutory auditor of the company even though a new auditor was appointed in his place at the Annual General Meeting held on 30th September, 2011. (8 Marks)
- (b) Shyamgarh Chemicals Limited, a listed company, having a paid-up equity share capital of Rs.80 crore and net worth of Rs.120 crores as on 31st March, 2012 proposes to raise funds to finance its expansion programme by issue of equity shares under the "Qualified Institutions Placement Scheme."

Answer the following with reference to the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009:

- What are the conditions to be satisfied by the company so that it can make Qualified Institutions Placement?
- What is the maximum amount that can be raised by the company under the proposed issue of shares?
- What are the restrictions, if any, with regard to pricing of issue and transferability of shares by qualified institution buyers? (8 Marks)

Answer

- (a) (i) **Appointment of firm of Chartered Accountants:** According to proviso to sub section (1) of section 226 of the Companies Act, 1956, a firm of Chartered Accountants may be appointed as auditor of a company and in that case any partner so practicing may act in the name of the firm.

Disqualification of auditor: According to section 226(3)(e) of the Act, a person who holds any security of the company, which carries voting rights, cannot be appointed as auditor of the company. Further Section 226(5) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 226, he shall be deemed to have vacated his

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office of auditor.

However, section 226 (3) (e) is not applicable if the security is held in the name of wife or other relative of any partner/s of the firm. Hence, according to the provisions of Companies Act, 1956, Suresh & Company can continue to function as statutory auditors of the Company even after 5th October 2011 i.e. after investment made by wife of a partner in the equity shares of Yashodharman Granites Limited.

- (ii) **Tenure of auditor:** According to sub-section (1) of section 224 of the Companies Act, 1956, every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of next annual general meeting.

If for any reason the next annual general meeting is adjourned to a later date subsequent to the date on which it was to be convened, the auditor will continue to hold office till the conclusion of the adjourned meeting as adjourned meeting is a continuation of the original meeting.

If a new auditor is appointed in his place at the original meeting (when the original auditor was due to retire) and the meeting is adjourned, the new auditor can function as a statutory auditor only from the conclusion of the adjourned meeting.

Thus, in the instant case, CA Naresh (original auditor) is right in continuing to function as statutory auditor of the Dalanda Cement Limited even though a new auditor was appointed at his place at the Annual General Meeting held on 30th September, 2011. He will continue to hold office till the conclusion of the adjourned meeting held on 30th November, 2011. Also, the new auditor can function as a statutory auditor only from the conclusion of the adjourned meeting held on 30th November, 2011.

- (b) (i) **Conditions for qualified institutions placement [Chapter VIII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009]:** Shyamgarh Chemicals Limited, a listed company may make qualified institutions placement if it satisfies the following conditions:
- (a) a special resolution approving the qualified institutions placement has been passed by its shareholders;
 - (b) the equity shares of the same class, which are proposed to be allotted through qualified institutions placement or pursuant to conversion or exchange of eligible securities offered through qualified institutions placement, have been listed on a recognised stock exchange having nation wide trading terminal for a period of at least one year prior to the date of issuance of notice to its shareholders for convening the meeting to pass the special resolution;
 - (c) it is in compliance with the requirement of minimum public shareholding specified in the Securities Contracts (Regulation) Rules, 1957;

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- (d) In the special resolution, it shall be, among other relevant matters, specified that the allotment is proposed to be made through qualified institutions placement and the relevant date referred in the regulations shall also be specified.
- (ii) **Restrictions on amount raised:** The aggregate of the proposed qualified institutions placement and all previous qualified institutions placements made by the issuer in the same financial year shall not exceed five times the net worth of the issuer as per the audited balance sheet of the previous financial year.

In the instant case, the net worth of Shyamgarh Chemicals Limited is ₹ 120 crore. Therefore, the maximum amount that can be raised by the company under the proposed issue of shares is ₹ 600 crore (5*120).

- (iii) **Restrictions on Pricing of issue and transferability of shares:**

Pricing of issue: The qualified institutions placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date.

Transferability of shares: The eligible securities allotted under qualified institutions placement shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

Question 4

- (a) *The Board of Directors of PQR Steel Limited propose to make the following appointments:*
- 'S', son of 'P', a Director of the said company, is proposed to be appointed as Managing Director of the company on a monthly remuneration of Rs.75,000.*
 - 'D', daughter of 'Q', another Director of the said company, is proposed to be appointed as Accounts Manager on a salary of ₹ 60,000 per month.*
 - 'B', brother of 'R', another Director of the said company is proposed to be appointed as Purchase Manager in PQR Forgings Limited, a subsidiary of PQR Steel Limited on a salary of ₹ 60,000 per month.*

Explain the legal requirements under the Companies Act, 1956 to be complied with by the company to give effect to the proposed appointments. (8 Marks)

- (b) *The Managing Director of a large public company confessed that he was responsible for manipulation of the accounts and window dressing of the published accounts of the company. In view of this, the Central Government proposes to appoint its nominees as Directors of the company. Explain briefly the powers of the Central Government under the Companies Act, 1956 to appoint its nominees as Directors of a company to prevent*

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oppression or mismanagement and the role of the Central Government with regard to the affairs of such a company. (8 Marks)

Answer

- (a) (i) 'S', son of 'P', a director of PQR Steel Limited, is appointed as the Managing Director of the company: According to the sub-section (1) of section 314 of the Companies Act, 1956, except with the consent of the company accorded by a special resolution, no director of a company or relative shall hold any office or place of profit except that of Managing Director or Manager of the company.

Thus, in the instant case, the provision of section 314 are not attracted, even through 'S' is related to one of the directors of the company. This is because the appointment of Managing Director or Manager is outside the purview of the provisions of Section 314.

If 'S' is not already a director of the company, steps must be taken to appoint him first as an additional director or director. Thereafter he may be appointed as Managing Director by complying with the requirements under section 269 read with Schedule XIII to the Companies Act, 1956. The appointment can be made by the Board subject to the approval the company in general meeting as the proposed remuneration is within the limits laid down in Schedule XIII.

- (ii) 'D', daughter of 'Q', another Director of the said company is proposed to be appointed as Accounts Manager on a salary of ₹ 60,000 per month.

According to sub-section (1B) of section 314 of the Companies Act, 1956, no relative of a director can be appointed to any office or place of profit under the company which carries a monthly remuneration of not less than ₹ 2,50,000/- except with the prior consent of the company by way of a special resolution and the approval of the Central Government.

Since the remuneration proposed to be paid to 'D' does not exceed ₹ 2,50,000/- per month, her appointment as Accounts Manager does not require the prior consent of the company by special resolution and also the approval of the Central Government is not required. However, as the proposed remuneration exceeds ₹ 50,000/- her appointment shall require the passing of special resolution by the company. The special resolution is required to be passed at a general meeting of the company held for the first time after such appointment.

- (iii) 'B', brother of 'R', another Director of the said company is proposed to be appointed as Purchase Manager in PQR Forgings Limited, a subsidiary of PQR Steel Limited on a salary of ₹ 60,000 per month.

Alternative 1: According to section 314, the appointment of a director of a company (irrespective of the remuneration drawn) and a relative of "such" director carrying a monthly remuneration of ₹ 50,000, in the company or company's subsidiary can be made only with the consent of the company by special resolution. As per the

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wording of the section only relatives of "such" directors who themselves hold office or place of profit would be covered within the purview of section 314(1). Thus, if 'R' himself also holds office of profit in the company then only 'B', brother of 'R' would be covered under the provisions of section 314(1). But 'R' does not hold office or place of profit, thus, 'B' will not be hit by the provisions of section 314 (1) and his appointment as Purchase Manager will be made by PQR Forgings Limited, subsidiary of PQR Steel Limited.

Alternative 2: According to section 314, the appointment of a director of a company (irrespective of the remuneration drawn) and a relative of such director carrying a monthly remuneration of ₹ 50,000, in the company or company's subsidiary can be made only with the consent of the company by special resolution. When we construe the intent of legislature then it seems likely that the intent of law was to include all specified persons related to directors (whether such director holds office or place of profit or not).

Thus, 'B' brother of 'R' director would be covered under the provisions of 314 (1) and accordingly consent of the company by special resolution is needed for the proposed appointment of 'B' as Purchase Manager in PQR Forgings Limited (subsidiary of PQR Steel Limited) as he draws a monthly remuneration of ₹ 60,000 which is in excess of prescribed limit of ₹ 50,000.

- (b) **Power of Central Government to prevent oppression or mismanagement:** The Central Government is empowered to appoint its nominees as directors of a company to effectively safeguard the interest of the company or its shareholders or the public interest. If the Central Government wants to appoint its nominees as Directors of such a company then it has to make a reference to the Company Law Board (CLB) and if the CLB is satisfied that the affairs of the company have been conducted in a manner oppressive to any member of the company or in a manner prejudicial to the interests of the company or to public interest, it may pass an order asking the Central Government to appoint directors for a period not exceeding three years on any one occasion. There is no limit as to the number of directors that can be appointed. The CLB may also pass similar orders on an application of not less than 100 members or members holding atleast one tenth of the total voting power. Hence Central Government can appoint its nominees as directors of the company only on an order passed by CLB in this regard and not on its own.

Notwithstanding anything contained in the Companies Act or in any other law for the time being in force, where any person is appointed by the Central Government to hold office as director or additional director, Section 408 (6) of the Companies Act, 1956, empowers the Central Government to issue such directions to the company as it may consider appropriate in regard to its affairs. Such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company. When such directions are given, the appointment, removal or alteration, as the case may be shall be deemed to have come into effect as if the

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provisions of the Companies Act in this behalf have been complied without requiring any further act or thing to be done. Though these powers are substantial, yet the same do not empower the Central Government to interfere in the day to day management of the company.

Further, Section 408(7) empowers the Central Government to require the persons appointed as directors to report to the Central Government from time to time with regard to affairs of the company.

Question 5

- (a) Explain the term "Overriding Preferential Payments" under the provisions of the Companies Act, 1956. ABC Limited is being wound-up by the Court. The official liquidator has realized ₹ 100 lakh by selling the land and buildings mortgaged by the company in favour of its bankers. The company owes ₹ 200 lakh to the bank. The bank has claimed that the amount realised by sale of land and buildings must be paid in full to it in preference to the workmen's dues to the extent of ₹ 50 lakh. Examine the Bank's claim with reference to the provisions of the Companies Act, 1956. (8 Marks)
- (b) Mr. Jhameshwar was working as Manager in a banking company. The Reserve Bank of India removed Mr. Jhameshwar on the ground that his conduct was detrimental to the interests of the depositors. Decide whether the Reserve Bank of India has power to remove the said Manager under the provisions of the Banking Regulation Act, 1949. What remedies are available to Mr. Jhameshwar against his removal under the provisions of the said Act? (8 Marks)

Answer

- (a) **Overriding preferential payment:** As per the Section 529A of the Companies Act, 1956 notwithstanding anything contained in other provisions of this Act 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 meet them, in which case they shall abate in equal proportions.

As per the above provision, the dues of the workmen and debt due to the secured creditors are to be treated *pari passu* and have to be treated as prior to all other dues.

In view of the stated legal position in the problem, the contention of the Bank to pay the amount in full is not valid as the debts payable to the workmen and the secured creditors shall be paid in full, unless the realized assets are insufficient to meet the due debts, in which case they shall abate in equal proportions. Here, in the given problem, the realized assets of ABC Limited is ₹ 100 lakh and debts due to the secured creditor (Bank) is ₹ 200 lakh and the workmen's dues is ₹ 50 lacs.

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In the light of the provisions of Section 529 and 529A, amount to be paid towards

$$\begin{aligned}\text{Workmen's dues} &= \text{Amount realized} \times \frac{\text{Workmen's dues}}{\text{Workmen's dues} + \text{secured loan}} \\ &= ₹ 100 \text{ lacs} \times \frac{₹ 50 \text{ lacs}}{₹ 50 \text{ lacs} + 200 \text{ lacs}} \\ &= ₹ 100 \text{ lacs} \times \frac{50}{250} \\ &= ₹ 100 \text{ lacs} \times \frac{1}{5} = ₹ 20 \text{ lacs}\end{aligned}$$

In view of the provisions of Sec. 529 and 529A, the contention of the bank that whole of ₹ 100 lacs realized from the sale of land, etc. shall be paid to the bank towards repayment of loan is not tenable, only a sum of ₹ 80 lacs shall be paid.

Thus, Official Liquidator will have to pay ₹ 20 Lacs to Workmen and ₹ 80 Lacs to the Bank.

- (b) **Removal of a manager of a banking company:** According to Section 36AA of the Banking Regulation Act, 1949, Reserve Bank of India (RBI) can terminate/ remove any Chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when RBI is of the opinion that conduct of such persons is detrimental to the interest of the depositors or for securing proper management of the banking company.

Accordingly as per the above provision, RBI has power to remove Mr. Jhameshwar who was working as Manager in a banking company.

Remedies available: The same provision prescribes the remedies available to the Mr. Jhameshwar against his removal-

- (i) Before such removal, he should be given an opportunity to be heard of.
- (ii) He can make an appeal to the Central Government within 30 days from the date of communication of such termination order.
- (iii) The decision of the Central Government cannot be called into question.

Question 6

- (a) *A producer company proposes to amend the objects specified in its Memorandum of Association and certain provisions in its Articles of Association. The Company also proposes to shift its registered office from the State of Kerala to Tamil Nadu. Explain the requirements under the provisions of the Companies Act, 1956 to give effect to these proposals. (8 Marks)*
- (b) *The Directors of a public company received a show cause notice from the Registrar of Companies for violation of Section 295 of the Companies Act, 1956. State whether the*

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said offence is compoundable under the said Act. Is it possible for a person to apply for compounding of offence even after prosecution has been launched? Whether penalty paid in respect of compounding of an offence will be treated as a dis-qualification under Part I of Schedule XIII to the Companies Act, 1956 requiring approval of the Central Government for the appointment of such person as a Managing Director of a public company? (8 Marks)

Answer

- (a) (i) **Alteration in Memorandum of Association of producer company:** According to section 581H of the Companies Act, 1956, a producer company shall not alter the conditions contained in its memorandum except in the cases, by the mode and to the extent for which express provision is made in this Act. However, a producer company may, by special resolution, not inconsistent with Section 581B, alter its objects specified in its memorandum.
- A copy of the amended memorandum, together with a copy of the special resolution duly certified by two directors, shall be filed with the Registrar within thirty days from the date of adoption of resolution.
- (ii) **Alteration in Articles of Association:** As per section 581-I, any amendment to the articles should be proposed by not less than two-third of the elected directors or by not less than one-third of the members of the producer company, and adopted by the members by a special resolution.
- A copy of the amended articles together with the copy of the special resolution, both duly certified by two directors, should be filed with the Registrar within thirty days from the date of its adoption.
- (iii) **Shifting of the registered office:** Section 581H contains the provision as to shifting of the registered office. According to the provisions, in case of transfer of the registered office of a producer company from the jurisdiction of one Registrar to another, certified copies of the special resolution certified by two directors shall be filed with both the Registrars within thirty days, and each Registrar shall record the same, and thereupon the Registrar from whose jurisdiction the office is transferred, shall forthwith forward to the other Registrar all documents relating to the producer company.
- The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Company Law Board (Tribunal) on petition.
- (b) **Compounding:** Any act done in contravention of the Section 295 relating to loans to directors, etc. without approval of Central Government as required amount to an offence punishable with simple imprisonment extending to 6 months or with fine extending to ₹ 50,000/-.

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Section 621A, provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable under this act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine may, either before or after the institution of any prosecution be compounded by (i) the Company Law Board (ii) the Regional Director, where the fine imposed for such offence does not exceed ₹ 50,000/-, on payment or credit of such sum, as may be specified.

Thus, in the instant case, if the Director is punishable with fine only, then the offence can be compounded as the fine does not exceed ₹ 50,000. But if the director is punishable with imprisonment then the offence cannot be compoundable as Section 621A does not compound the offences which are punishable with imprisonment.

Compounding of offence after prosecution has been launched: Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharge. Accordingly in the given problem, Directors may apply for compounding of offence even after the prosecution has been launched.

Disqualification under Part I of Schedule XIII: Part I of the Schedule XIII prescribes that no person shall be eligible for appointment as a Managing Director/ Whole-time Director/a Manager of a company unless he satisfies the condition that he had not be been sentenced to imprisonment for any period, or a fine exceeding 1,000/-, for the conviction of an offence under the Companies Act, 1956.

As per the above law, if directors have paid penalty in respect of compounding of an offence, there they will be treated as disqualified for being appointed as a Managing Director.

Alternate Answer to Compounding:

Compounding: All offences other than an offence which is punishable under the Companies Act with imprisonment only or with imprisonment and also with fine are compoundable under Section 621A. As the offence under Section 295 is punishable with fine or imprisonment, it is compoundable but with the permission of the Court. [According to Companies (Second Amendment) Act, 2002]

Alternative Answer to Disqualification:

If directors have paid penalty in respect of compounding of an offence, then they will not be disqualified for being appointed as a Managing Director of a company. Compounding of an offence does not amount to conviction by a Court of Law and the prohibition contained in paragraph 1(a) in Schedule XIII to the act does not apply. (Department's guidelines dated 28th April, 1993, as to compounding of offences in relation to section 621A of the Companies Act, 1956)

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Question 7

Attempt any four:

- (a) *Mrs. Chandra, a resident outside India, is likely to inherit from her father some immovable property in India. Are there any restrictions under the provisions of the Foreign Exchange Management Act, 1999 in acquiring or holding such property? State whether Mrs. Chandra can sell the property and repatriate outside India the sale proceeds.* (4 Marks)
- (b) *The Central Government, without referring the matter to the Supreme Court of India for inquiry, removed a member of the Competition Commission of India on the ground that he has become physically or mentally incapable of acting as a member. Decide, under the provisions of the Competition Act, 2002, whether removal of the member by the Central Government is lawful?* (4 Marks)
- (c) *Mr. Fraudulent has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. Advise, as to how can he be released on bail in this case?* (4 Marks)
- (d) *A life insurance policy, in favour of Kamal Kumar, came into force on 1st February, 2009. In January, 2012 the insurer came to know that there was a mis-statement in the proposal for insurance regarding the age of the nominee. Decide, under the provisions of the Insurance Act, 1938, whether the said insurance policy can be called in question?* (4 Marks)
- (e) *Briefly explain the meaning and application of the rule of "Harmonious Construction" in the interpretation of statutes.* (4 Marks)

Answer

- (a) As per sub-section 5 of section 6 of the FEMA, 1999, a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

Accordingly in the problem, Mrs. Chandra, a resident outside India, may acquire or hold any immovable property of his father in India by way of inheritance in both the conditions, firstly, where her father, a resident outside India, had acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or as per the provisions of these Regulations or secondly, where her father, a resident in India.

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Repatriation of sale proceeds: A person referred to in sub-section (5) of section 6 of the Act, or his successor shall not, except with the prior permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property.

Thus, accordingly Mrs. Chandra can sell the property and repatriate outside India the sale proceeds only with the prior permission of the RBI.

- (b) **Removal of Member of Competition Commission of India:** Section 11(2) of the Competition Act, 2002 empowers the Central Government to remove, by an order, a member of the Competition Commission of India from his office if such member has become physically or mentally incapable of acting as a member. However, provisions of Section 11(3) of the said Act put some restrictions on such power of the Central Government. According to this Section, the Central Government has to make a reference to the Supreme Court of India under the two conditions- where the member has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or where a member has abused his position as to render his continuance in office prejudicial to the public interest.

As the ground of removal mentioned in the question does not fall under these two categories, thus, the Central Government can remove a member of the Competition Commission of India without referring the matter to the Supreme Court for Inquiry.

In view of the above, the action of the Central Government is in order and removal of member is valid.

- (c) Section 45 of the Prevention of Money Laundering Act, 2002, provides that the offences under the Act shall be cognizable and non-bailable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-
- (i) The Public Prosecutor has been given an opportunity to oppose the application for such release and
 - (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm person, the Special Court can direct the release of such person on bail.

- (d) **Policy not to be called in question on ground of mis-statement after two years:** According to section 45 of the Insurance Act, 1938, no policy of life insurance is effected after the expiry of two years from the date on which it was effected be called in question by an insurer on the ground that statement made in the proposal or in any report of a medical officer, or referee, or friend of the insured, or in any other documents leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such

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statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.

Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

Thus, the insurance policy cannot be called in question. Correction as to the age of the nominee can be made at any time and so in the terms of the policy can be adjusted on subsequent proofs.

- (e) **Meaning of rule of Harmonious Construction:** When there is doubt about the meaning of the words of a statute, these should be understood in the sense in which they harmonise with the subject of the enactment and the object which the legislature had in view. Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them. This is what is known as the Rule of Harmonious Construction.

It must always be borne in mind that a statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent. The Court's duty is to give effect to all the parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the intent of the legislature, not overriding it.

Application of the Rule of Harmonious Construction: The Rule of Harmonious Construction is applicable only when there is a real and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other. When after having construed their context the words are capable of only a single meaning, the rule of harmonious construction disappears and is replaced by the rule of literal construction.

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