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PAPER-4 – CORPORATE AND ALLIED LAWS

Question No. 1 is compulsory.

Answer any five from the rest

Question 1

- (a) *The Annual General Meeting of ABC Limited declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2013. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the Company, up to 30th June, 2013. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for default period. Decide in the light of provisions of the Companies Act, 1956, whether Mr. Ranjan would succeed? Also state the directors' liability in this regard under the Act. (5 Marks)*
- (b) *The Board of Directors of XYZ Limited decided to pass a resolution to purchase 35,000 equity shares of ₹ 100 each of PQR Limited at a meeting. Draft a specimen Board Resolution to be passed at the said meeting. (4 Marks)*
- (c) *What is Director Identification Number (DIN)? Mr. Mohan, a newly appointed director of RST Limited applied for DIN. Advise him about the list of scanned documents required to be attached with DIN-1. (5 Marks)*
- (d) *A recognized stock exchange proposes to make bye-laws for the regulation and control of contracts relating to the purchase and sale of securities. State the legal requirements under the Securities Contracts (Regulation) Act, 1956 to give effect to the proposal. Explain the powers of the Securities and Exchange Board of India to amend the bye-laws of a recognized stock exchange. (6 Marks)*

Answer

- (a) **Liability for failure to pay/post dividend within prescribed time:** According to Section 207 of the Companies Act, 1956, dividend has to be paid within 30 days from the date of its declaration. The posting of dividend warrant by the company within 30 days will be deemed to be payment irrespective of the fact whether the shareholder has encashed it or not. Failure to pay or post dividend warrant within 30 days constitutes an offence under the Act and the company shall be liable to pay simple interest at the rate of eighteen percent per annum during the period for which such default continues.

In the instant case, the Annual General Meeting of ABC Limited declared a dividend at the rate of 30% payable on paid up equity share capital of the company as recommended by the Board of Directors on 30th April, 2013. But the company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the company, up to 30th June, 2013.

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- I In view of the above provisions, Mr. Ranjan can file a suit against the company for the payment of dividend because failure to pay or post dividend warrant within 30 days constitutes an offence under the Act. Thus, he would succeed but he is entitled for simple interest at the rate of 18% per annum (and not 20% as claimed) during the period for which such default continues.
- II Every director of the company, if he is knowingly a party to the default, is punishable with simple imprisonment for a term which may extend to three years and also to a fine of one thousand rupees for every day during which such default continues.

(b) Specimen Board Resolution: Purchase of Equity Shares

Resolution passed at the meeting of the board of directors of XYZ Limited held at its registered office situated at _____ on _____ (day) at _____ A.M.

"Resolved that pursuant to provisions of Section 372A of the Companies Act, 1956, the company XYZ Limited do purchase 35,000 equity shares of ₹ 100 each of PQR Limited (not being under the same management of the company) and that the resolution be passed by all the directors present unanimously.

Resolved further that Mr. , a Director of the company, be and is hereby authorised to sign /execute the necessary documents in this connection."

Sd/-

Board of Directors

XYZ Limited

(c) Director Identification Number: Documents to be attached (Sections 266A and 266B of the Companies Act, 1956):

Director Identification Number (DIN): It is a unique Identification Number allotted by the Central Government [Office of Regional Director (Northern Region), Ministry of Corporate Affairs, Noida] to an individual who is an existing director of a company or intends to be appointed as director of a company pursuant to section 266A and 266B of the Companies Act, 1956.

List of scanned documents required to be attached with DIN-1: The scanned documents required to be attached with DIN-1 are following:

- (i) High resolution photograph of the applicant.
- (ii) Copy of PAN is mandatory for identity, name, father's name and date of birth. Proof of father's name is not required in the case of foreign nationals.
- (iii) Copy of passport is mandatory as an id proof in the case of foreign nationals.
- (iv) Present address proof which should not be older than 2 months.

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(v) Annexure – 1 as per the format given on the website i.e. www.mca.gov.in.

- (d) **Power of Stock Exchange to make bye-laws:** Any recognized stock exchange may make bye - laws for the regulation and control of contracts relating to the purchase and sale of securities by complying with the requirements under section 9(1) of the Securities Contracts (Regulation) Act, 1956. The bye-laws made by the stock exchange are subject to the previous approval of the Securities and Exchange Board of India.

The bye-laws made under this section may (i) specify the bye-laws, the contravention of which shall make a contract void under sub-section (1) of section 14 of the said Act and (ii) provide that the contravention of any of the bye-laws shall render the member concerned liable to punishments, namely, fine or expulsion from membership or suspension from membership or any other penalty of a like nature not involving the payment of money [Sub-section (3)].

Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and, when approved by the SEBI, shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognized stock exchange is situated, and shall have effect as from the date of its publication in the Gazette of India [Sub-section (4)].

If the SEBI is satisfied, in any case, that in the interest of the trade or in the public interest any bye-laws should be made immediately, it may, by order in writing specifying the reasons therefore, dispense with the condition of previous publication.

Power of SEBI to amend bye-laws: Section 10 of the Securities Contracts (Regulation) Act, 1956 empowers the SEBI to amend bye-laws of a recognized stock exchange.

SEBI may either on a request in writing received by it in this behalf from the governing body of a recognised stock exchange or on its own motion amend any bye-laws made by such stock exchange. SEBI will have to be satisfied, after consultation with the governing body of the stock exchange that it is necessary or expedient to amend the bye-laws and record its reasons also. Amended bye-laws should be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the stock exchange is situate.

If the stock exchange has any objection to the amendments made by the SEBI, it may, within 2 months apply to the SEBI for revision.

Question 2

- (a) *Mr. Raman, brother of Mr. Rahul, a director of VMR Limited, was appointed as Chief Accounts Officer on a monthly salary ₹ 2,80,000 without the knowledge of Mr. Rahul. Referring to the provisions of the Companies Act, 1956, state the time limit in which the Company may complete the necessary legal formalities for the said appointment. Also explain the consequences, in case the Company fails to do so. (8 Marks)*

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- (b) *The Board of Directors of Raj Steels Limited consists of one Managing Director, one Technical Director and three ordinary Directors. Mr. Sriram, an ordinary Director sent his resignation in writing to the Company. Mr. Raj, the Managing Director also sent his resignation to the Chairman of the Board of Directors and requested that he shall be relieved immediately. When does the resignation take effect? Is it possible for a Director to resign orally or withdraw the resignation?* (8 Marks)

Answer

- (a) **Appointment of Relative of Director:** 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.

In the present case, Mr. Raman, brother or Mr. Rahul, a director of VMR Limited, was appointed as Chief Accounts Officer on a monthly salary of ₹ 2,80,000 without the knowledge of Mr. Rahul.

Since, the remuneration proposed to be paid to Mr. Raman exceeds ₹ 2,50,000/- per month, his appointment as Chief Accounts Officer requires the prior consent of the company by special resolution and the approval of the Central Government is also required.

Consequences: If any office of place of profit is held, without the prior consent of the company by a special resolution and the approval of the Central Government has not been obtained, the relative appointed to such office or place of profit shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisites or advantage enjoyed by him on and from the date on which the office was so held by him [Sub-section (2B)].

Thus, in the present case, Mr. Raman, was appointed as Chief Accounts Officer without the knowledge of Mr. Rahul. It means that he has been appointed without the prior consent of the company by special resolution and the approval of the Central Government has not been obtained. So, Mr. Raman, shall be liable to refund to the company the remuneration received or the monetary equivalent of any perquisites or advantage enjoyed by him on and from the date on which the office was so held by him.

The company shall not waive the recovery of any sum refundable to it unless permitted to do so by the Central Government [Sub-section (2D)].

- (b) **Resignation by Directors and withdrawal thereof**

Resignation by Mr. Sriram, an ordinary director in writing: The Companies Act, 1956 contains no provision relating to resignation of a director from his office. However, a provision laid down in the articles may give the right to a director to resign at any time, there the resignation will take effect without any need for its acceptance by the Board of

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Directors or the company in general meeting. As per *S.S. Lakshamana Pillai V. Registrar of Companies and T. Murari V. State*, even in the absence of a provision in respect of resignation under the Companies Act, 1956 or under the Articles of Association of the company, the resignation tendered by a director clearly in writing will take effect from the time when such resignation is tendered.

Where the resignation letter states that it is to take effect on acceptance, or where the articles so require, acceptance is necessary to end the tenure of office of a director.

In view of the above legal position, Mr. Sriram, an ordinary director has ceased to be a director of Raj Steels Ltd. from the time when such resignation is given to the company, provided his resignation letter does not state that the resignation is to take effect on acceptance or the articles of Raj Steels Ltd. does not so require.

Resignation by Mr. Raj, the Managing Director: A managing director cannot resign merely by giving a notice. In his case, a formal acceptance of resignation by the company is essential so as to make it complete and effective. This is because he occupies two positions or possesses two capacities, viz., (a) one that of a director, and (b) the other that of manager director in the sense of a whole-time employee. An employee cannot give up office at his pleasure, simply by giving notice. The notice or the letter of resignation is required to be approved or accepted by the company (*Achutha Pal V. Registrar of Companies*)

Resignation by director orally: A verbal resignation is enough, though articles usually provide for a written notice. However, as per *Latchford Premier Ltd. V. Enion*, it was decided that a verbal resignation at a general meeting is effective even if the articles require a written resignation. But such a resignation will not be effective unless made to and accepted by the board.

Withdrawal of resignation: A director cannot withdraw his resignation, without the consent of the company, even if such withdrawal is sought before the general meeting or the Board considered the resignation (*Glossop V. Glossop*)

Question 3

- (a) One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj a qualified Chartered Accountant was appointed as an auditor of the Company at the Annual General Meeting held on 30th April 2013 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act 1956. Decide, whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act. (8 Marks)
- (b) NCP Limited, a listed company proposes to issue equity shares under the "Institutional Placement Programme". Explain the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 on the following aspects:

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- (i) Conditions for institutional placement programme.
- (ii) Minimum number of allottees.
- (iii) Restrictions on size of the offer.
- (iv) Transferability of eligible securities. (8 Marks)

Answer

- (a) **Validity of appointment of Auditor:** According to Section 224A (1) of the Companies Act, 1956, the appointment or re-appointment at each annual general meeting of an auditor or auditors shall be made by a special resolution in the case of a company in which not less than twenty-five per cent of the subscribed share capital is held, whether singly or in any combination, by-
- (i) A public financial institution or a Government company or Central Government or any State Government, or
 - (ii) Any financial or other institution established by any Provincial or State Act in which a State Government holds not less than fifty-one percent of the subscribed share capital, or
 - (iii) A nationalized bank or an insurance company carrying on general insurance business. Further as per sub-section (2), if any company omits or fails to pass at its annual general meeting any special resolution appointing an auditor or auditors, it shall be deemed that no auditor or auditors had been appointed by the company at its annual general meeting, and thereupon the provisions of sub-section (3) of section 224 shall become applicable in relation to such company i.e. Central Government shall appoint an auditor to fill the vacancy.
 - (iv) In view of the above provisions:
 - (1) The objection of Mr. Sanjay is tenable because 25 percent of the subscribed share capital is held by a State Government i.e. Government of Rajasthan. Hence the appointment of Mr. Neeraj as an auditor shall be made by a special resolution (not by ordinary resolution) in the general meeting.
 - (2) The appointment of Mr. Neeraj, an auditor is not valid. As stated in section 224 A(2), if the company fails to pass at its annual general meeting any special resolution appointing an auditor, it shall be deemed that no auditor had been appointed by the company at its annual general meeting.
 - (3) In this case the Central Government shall appoint an auditor to fill the vacancy because provisions of section 224 (3) shall become applicable in relation to such company.
- (b) **Institutional Placement Programme [SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009]:** According to the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, NCP Limited, a listed company

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should follow the under mentioned regulations for the issue of equity shares under the "Institutional Placement Programme":

(i) **Conditions for institutional placement programme.**

1. An institutional placement programme may be made only after a special resolution approving the institutional placement programme has been passed by the shareholders of the issuer in terms of section 81(1A) of the Companies Act, 1956.
2. No party paid – up securities shall be offered.
3. The issuer shall obtain an in-principle approval from the stock exchange(s).

(ii) **Minimum number of allottees:**

1. The minimum number of allottees for each offer of eligible securities made under institutional placement programme shall not be less than ten. Further, no single allottee shall be allotted more than 25% of the offer size.
2. The qualified institutional buyers belonging to the same group or who are under same control shall be deemed to be a single allottee.

(iii) **Restrictions on size of the offer:**

1. The aggregate of all the tranches of institutional placement programme made by the eligible seller shall not result in increase in public shareholding by more than 10% or such lesser percent as is required to reach minimum public shareholding.
2. Where the issue has been oversubscribed, an allotment of not more than 10% of the offer size shall be made by the eligible seller.

(iv) **Transferability of eligible securities:**

The eligible securities allotted under institutional placement programme shall not be sold by the allottee for a period of one year from the date of allocation/allotment, except on a recognised stock exchange.

Question 4

- (a) *The Board of Directors of Quality Forgings Limited having a paid-up share capital of ₹ 80 lakhs appointed Ram Marketing Limited as sole selling agent for a period of five years with effect from 1st January, 2012. The Directors of Ram Marketing Limited were holding fully paid-up shares of face value of ₹ 3.5 lakhs in Quality Forgings Limited. Special Resolution approving the appointment of sole selling agent was passed in the general meeting held on 20th May, 2012. Approval of Central Government was obtained on 1st October, 2012. Examine with reference to the Provisions of the Companies Act, 1956 whether the appointment of sole selling agent is valid.*

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What would be your answer if paid-up share capital of Quality Forgings Limited was only ₹ 40 lakhs on 1st January, 2012 and it was increased to ₹ 80 lakhs on 1st January, 2013.

(8 Marks)

- (b) *Explain the Provisions of the Banking Regulation Act, 1949 relating to audit of accounts of a banking company, appointment of Auditor and the Auditor's report. State whether the Provisions of the Companies Act, 1956 relating to powers, duties and functions of an Auditor of a company are applicable to the statutory Auditors of a banking company.*

(8 Marks)

Answer

- (a) **Validity of the appointment of Sole Selling Agent:** According to the provisions of section 294AA of the Companies Act, 1956, no company shall appoint any individual, firm or body corporate, who or which has a substantial interest in the company, as Sole Selling Agent of that company unless such appointment has been previously approved by the Central Government [Sub-section (2)].

Also, no company having a paid up share of rupees fifty lakhs or more shall appoint a Sole Selling Agent except with the consent of the company accorded by a Special Resolution and the approval of the Central Government [Sub-section (3)].

"Substantial interest" in relation to a body corporate, means the beneficial interest held by such body corporate or one or more of its directors or any relative of such director, whether singly or taken together, in the shares of the company, the aggregate amount paid up on which exceeds five lakhs of rupees or five per cent of the paid up share capital of the company, whichever is the lesser.

- (i) In the present case, Board of directors of Quality Forgings Limited have appointed Ram Marketing Limited as Sole Selling Agents for a period of 5 years with effect from 1st January, 2012. The paid up share capital of Quality Forgings Limited is ₹ 80 lakhs. The directors of Ram Marketing Limited holds fully paid shares of face value of ₹ 3.5 lakhs in Ram Marketing Limited.

Here, 5% of the paid up share capital of Quality Forgings Limited works out to ₹ 4 lakhs. The directors of Ram Marketing Limited were holding fully paid shares of ₹ 3.5 lakhs in Quality Forgings Limited and hence Ram Marketing Limited was not holding substantial interest in Quality Forgings Limited. Hence, no prior approval of the Central Government was needed.

Further, since Quality Forgings Limited have a paid up capital of ₹ 50 lakhs or more, the appointment of sole selling agent will require the consent of the company accorded by a Special Resolution and the approval of the Central Government. Quality Forgings Limited have taken the approval of company by special resolution on 20th May 2012 and that of Central Government on 1st October, 2012. Thus, it is

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satisfying the conditions for appointment of Ram Marketing Limited as Sole Selling Agents.

Hence, appointment of Sole Selling Agent is valid.

- (ii) In this case, the paid up capital of Quality Forgings Limited was 40 lakhs on the date of appointment of Sole Selling Agent i.e. 1st January, 2012.

Here, 5% of the paid up share capital of Quality Forgings Limited works out to ₹ 2 lakhs. The directors of Ram Marketing Limited were holding fully paid shares of ₹ 3.5 lakhs in Ram Marketing Limited and hence Ram Marketing Limited was holding substantial interest in Quality Forgings Limited. Therefore, it needs prior approval of the Central Government for the appointment of Ram Marketing Limited.

The approval of Central Government was obtained on 1st October, 2012 which is after the date of appointment of Sole Selling Agent. Hence, there is no prior approval of the Central Government and thereby, the appointment is invalid.

Even if the paid up capital is increased to ₹ 80 lakhs on 1st January, 2013, it will not affect the validity of the appointment of Ram Marketing Limited as the Sole Selling Agent since the original appointment on 1st January, 2012 was itself invalid.

- (b) **Audit of Banking Companies:** The balance sheet and profit and loss account prepared in accordance with section 29 of the Banking Regulation Act, 1949 shall be audited by a person duly qualified under any law for the time being in force to be an auditor of companies (Section 30). These auditors are known as statutory auditors. Notwithstanding anything contained in any law for the time being in force every banking company shall, before appointing, reappointing or removing any auditor or auditors obtain the previous approval of the Reserve Bank of India. Further, the Reserve Bank of India can ask for special audit of a banking company, if it is of the opinion that it is in the public interest or in the interest of depositors.

Auditor's report: In addition to the matters under the Companies Act, 1956, the auditor is required to state in his report, and he shall state in his report:

1. Whether or not the information and explanations required by him have been found to be satisfactory.
2. Whether or not the transactions of the company which have come to his notice have been within the powers of the company.
3. Whether or not the returns received from branch offices of the company have been found adequate for the purposes of his audit.
4. Whether the profit and loss account shows true balance of profit or loss for the period covered by such account.
5. Any other matter which he considers should be brought to the notice of the shareholders of the company.

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Applicability of Companies Act: According to section 2 of the Banking Regulation Act, provisions of the Banking Regulation Act shall be in addition to and not in derogation of the Companies Act, 1956 and other laws for the time being in force. Further, it has been specifically provided in section 30(2) that auditor of a banking company shall have the powers and exercise the functions as specified in section 227 of the Companies Act. Hence the powers and duties of the auditor of a banking company are also regulated by the Companies Act, 1956.

Question 5

- (a) *Modern Textiles Limited incurred huge losses during the last three financial years and its financial position was bad. The Company created a legal mortgage on some of its immovable properties in favour of a bank on 1st September, 2012 in the hope that by keeping good faith with the bank it could get further advances from the bank and the same could be utilized to revive the Company. Some creditors filed winding up petition in the court on 15th January, 2013. The court passed an order of winding up on 1st August, 2013. Answer the following with reference to the provisions of the Companies Act, 1956:*
- (i) *What is meant by 'Fraudulent Preference'? State the effect of 'Fraudulent Preference'.*
- (ii) *Whether the creation of legal mortgage by the Company in favour of the bank would amount to fraudulent preference? (8 Marks)*
- (b) *Examine the merits of the following petitions made under Sections 397 and 398 of the Companies Act, 1956 in the light of judicial pronouncements made in this regard:*
- (i) *A group of shareholders holding 12% of the issued share capital of Unique Products Limited have filed a petition before the Company Law Board alleging various acts of illegal, invalid and irregular transactions entered into in the name of the Company.*
- (ii) *Speciality Chemicals Private Limited is controlled by two groups of members. The group holding majority of shares made an application to Company Law Board alleging oppression by the minority group. (8 Marks)*

Answer

- (a) (i) **Fraudulent Preference:** According to the provisions of Section 531 of the Companies Act, 1956, all transfers of property, movable or immovable, made by delivery of goods or payment of money etc., if made by an insolvent person within 3 months before the presentation of insolvency petition, would be held to be a fraudulent preference of its creditors and would be invalid. Similarly, in the case of a company all such transfers, if made within 6 months before the commencement of its winding-up, would be deemed to be a fraudulent preference of its creditors, and would be invalid.

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- (ii) **Creation of legal mortgage by the company in favour of the bank:** In the present case, the Modern Textiles Limited created a legal mortgagee on some of its immovable properties in favour of a bank on 1st September, 2012 in the hope that by keeping good faith with the bank it could get further advances from the bank and the same could be utilized to revive the company.

For the purpose of proving a fraudulent preference, two things need be shown, viz.:

- (a) that in the case of a winding-up by or subject to the supervision of the Court, the transaction took place within 6 months before the presentation of the petition and in the case of voluntary winding-up, the transaction took place within 6 months of passing of resolution for winding-up; and
- (b) that the main motive in the mind of the company, acting through its directors, was to prefer one creditor to the other.

Thus, to prove fraudulent preference, it shall have to be established that the dominant motive was to commit an act of dishonesty. To find a case of fraudulent preference, the dominant motive in the mind of the company as represented by the directors or the general body of shareholders, as the case may be, must be to prefer the creditors. The dominant motive attending the transaction has to be ascertained, and if it tainted with an element of dishonesty, questions of fraud arise. In validating such payment the question is not whether the company is or is not damaged by the payment, but whether it was made with a bona fide view to assisting the company.

Thus, the creation of legal mortgage on some of its immovable properties with the bank is not a fraudulent preference because it has been done in the good faith so that the company could get further advances from the bank. It is a transaction in good faith.

- (b) (i) According to Sections 397 and 398 of the Companies Act, 1956, a group of shareholders of Unique Products Limited must hold more than 10% of the issued share capital of the Company or satisfy other requirements under section 399(1) of the Companies Act, 1956. Since the group holds 12% of the issue capital they are entitled to file a petition before the Company Law Board under sections 397 and 398 of the Companies Act, 1956 by alleging that the affairs of the Company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members of the Company. However, on the basis of *Seth Mohanlal Ganpatram V. Shri Sayaji Jubilee Colton and Jute Mills Company Ltd.*, mere illegal, invalid or irregular transactions entered into in the name of the company do not constitute a ground for invoking the provisions of section 397 unless it is proved that they are oppressive to any shareholder or prejudicial to the interest of the company or to the public interest.

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Thus, in the present case, the petition filed by the group of shareholders will fail unless they can prove to the satisfaction of the Company Law Board that the acts complained of in the petition are oppressive and prejudicial to the interest of the company and the public interest. And that to wind up the company would unfairly prejudice such member or members, but that otherwise those facts would justify the making of a winding up order on the ground that it was just and equitable that the Company should be wound up.

- (ii) **Right not confined to minority:** According to section 399, the right to apply for relief under section 397 or 398 is given to 100 members or 1/10th of the total number of members or any member or members holding not less than 1/10 of the issued share capital of the company. There is nothing in this section which suggests even indirectly that unless the application is made by minority shareholders it is not maintainable. The right to apply is, therefore, not confined to oppressed minority of the shareholders alone. As per *Re Sindhri Iron Foundry (P) Ltd.*, the oppressed majority also might apply for relief under section 397. Therefore, the petitioners are likely to succeed in getting relief provided the other condition laid down in section 397 (i.e. that to wind up the company would unfairly prejudice such members, but that otherwise the facts would justify the making of a winding-up order on just and equitable ground) is satisfied.

Question 6

- (a) *NKM Producer Company passed a resolution at its general meeting on 30th April 2013 to reconvert the producer company into inter-state co-operative society under the provisions of the Companies Act, 1956. Advise the Company, as a professional, regarding the method to be followed for re-conversion of Producer Company to inter-state co-operative society under the above Act. (8 Marks)*
- (b) *Premier Technologies Limited proposes to takeover Modern Solutions Limited, an unlisted company, by making an offer to the members of Modern Solutions Limited to purchase all their shares. At present, Premier Technologies Limited are not holding any shares in Modern Solutions Limited. Explain briefly the steps to be taken under the Companies Act, 1956 to give effect to the proposed takeover. (8 Marks)*

Answer

- (a) **Reconversion of Producer Company into Inter-State Co-Operative Society:** As per the provisions of Section 581ZS of the Companies Act, 1956, following is the method of reconversion:
- (1) **Application to the High Court:** Any producer company, being former an inter-State co-operative society, may make an application to the High Court for its re-conversion-
- (a) after passing a resolution in the general meeting by not less than two third of its members present and voting; or

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- (b) on request by its creditors representing three-fourth value of its total creditors,
- (2) **Holding of meeting:** The High Court shall, on the application made, direct holding of meeting of its members or such creditors, to be conducted in such manner as it may direct.
 - (3) **Majority in agreement with reconversion:** If a majority in number representing three-fourths in value of the creditors, or members, present and voting in person at the meeting conducted in pursuance of the directions of the High Court, agree for re-conversion, if sanctioned by the High Court, be binding on all the members and all the creditors, and also on the company which is being converted. Before sanctioning reconversion, the court should be satisfied by affidavit or otherwise containing all material facts relating to the company.
 - (4) **Filing of certified copy with Registrar:** An order made by the Court shall have no effect until a certified copy of the order has been filed with the Registrar.
 - (5) **Copy of order to be annexed with every copy of Memorandum:** A copy of every such order shall be annexed to every copy of the Memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a Memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.
 - (6) **Default in filing of certified copy:** If default is made in complying with filing of certified copy with the Registrar, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ₹ 100, for each copy in respect of which default is made.
 - (7) **Stay on suit/proceeding until the disposal of application:** The Court may, at any time after an application has been made to it, stay the commencement or continuation of any suit or proceeding against the company, until the application is finally disposed of.
 - (8) **Filing of an application under the Co-operative Society Act etc. after being sanctioned re-conversion by the High-Court:** Every producer company which has been sanctioned re-conversion by the High Court, shall make an application, under the Multi-State Co- operative Societies Act, 2002 or any other law for the time being in force for its registration as multi-State co-operative society or co-operative society, within six months of sanction by the High Court and file a report thereof to the High Court and the Registrar of Companies and to the Registrar of the co-operative societies under which it has been registered as a multi-State co-operative society or co-operative society as the case may be.
- (b) **Takeover of Company by Acquisition of Shares:** This is a method by which a company may acquire business and control of another company by acquisition of a majority of shares in that company. Section 395 of the Companies Act, 1956, provides a means for the

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compulsory acquisition of the shares of the dissenting minority to prevent such a minority from extracting unreasonably high price for its shares.

- (1) **Approval of holders of shares:** As per law, a scheme of contract involving the transfer of shares or any class of shares in a company has first to be offered for approval of the holders of such shares by the company seeking to acquire the shares.
- (2) **Period for the approval:** The scheme of contract must then be approved by the holders of not less than 90% in value of the shares concerned within four months from the date of the offer (by the transferee company).
- (3) Where such shares which are to be transferred are already held by the offeror (i.e. transferee company) or its nominee or its subsidiary to value greater than 10% of the aggregate of values of all the shares of the transferor company, the terms of the offer must be the same for the holders of all other shares and the scheme of contract must not only be approved by 9/10th in value of such holders but they must also be not less than 3/4th in number.
- (4) **Notice to dissenting shareholders by transferee company:** After satisfying these conditions, the transferee company may give notice to any dissenting shareholder, expressing its desire to acquire his shares. This notice, must be served within 2 months after the expiry of the period of 4 months.
- (5) **Transferee company bound to acquire shares, after serving of notice:** If such notice is given, the transferee company is entitled and bound to acquire these shares on the terms approved by the majority.
Except where the dissenting shareholder applies to the Court within one month from the date of the notice, and the Court orders otherwise.
- (6) **Copy of notice forwarded with an instrument of transfer to the transferor:** After serving notice, the transferee company must within the prescribed period, send a copy of the notice to the transferor together with an instrument of transfer executed by the transferee company and on behalf of the shareholders, by a person appointed by the transferee company.
- (7) **Payment of amount:** The transferee company must pay or transfer to the transferor company the amount or other consideration representing the price payable for the shares, which the transferee company is entitled to acquire.
- (8) **Registering of transferee company as the holder:** The transferor company must thereupon register the transferee company as the holder of those shares, and within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the money or other consideration representing the price payable to them by the transferee company.

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- (9) **Money received must be held in trust:** All sums of money and any other consideration received by the transferor company from the transferee company are to be held in trust for the several persons entitled to the shares in respect of which they have been received and until disbursed, these are to be kept in a separate bank account. These are to be paid to the shareholders against the deposit of relevant share certificates.
- (10) **Advice to dissenting shareholders:** Transferor company to advise the shareholders, whose shares have been taken over, as to the price payable to them within one month of the date of registration of the shares in favour of the transferee company and of the receipt of the amount or other consideration representing the price.

Question 7

Attempt any four:

- (a) *Examine with reference to the Provisions of the Foreign Exchange Management Act, 1999 and the rules made thereunder whether foreign exchange can be drawn for the following purposes:*
- (i) *Mr. Gopal, a cine artist in India proposes to organize a cultural programme at Dubai and requires to draw foreign exchange US \$ 1,00,000 for this purpose.*
- (ii) *Mr. Shah proposes to visit United States on a business tour and for this purpose he wants to draw foreign exchange US\$ 40,000 for meeting expenses. (4 Marks)*
- (b) *A truck manufacturing company proposes to enter into distributorship agreements requiring the dealers not to sell trucks of other manufacturers and also not to sell the trucks outside the territory assigned to them. Examine with reference to the Provisions of the Competition Act, 2002 whether the proposed agreements will be considered as Anti-Competitive Agreements and void in case the company entered into such agreements. (4 Marks)*
- (c) *PTM Limited, a banking company maintained the record of all transactions for a period of 5 years from the date of cessation of the transactions between the clients and the company. Decide whether the Company has fulfilled its obligation under the provisions of the Prevention of Money Laundering Act, 2002. (4 Marks)*
- (d) *Mr. Krishna wants to nominate Mr. Ram, his 10 years old son, as a nominee for his life insurance policy. Advise him under the provisions of the Insurance Act, 1938. (4 Marks)*
- (e) *The definition of a word in a statute may be either restrictive or extensive. Elaborate this with reference to the definition of 'Managing Director' in the Companies Act, 1956. (4 Marks)*

Answer

- (a) **Drawal of Foreign Exchange**
- (i) **Cultural programme:** Foreign exchange for meeting expenses of cultural tour can be withdrawn by a person after obtaining permission from the Government of India,

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Ministry of Human Resources Development (Department of Education and Culture) as prescribed in second schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Gopal can withdraw US \$ 1,00,000 after obtaining permission from the Government of India.

- (ii) **Business tour:** The type of payment envisaged is covered under Third Schedule to Foreign Exchange Management (Current Account Transactions) Rules, 2000. Release of foreign exchange exceeding US \$ 25,000 to a person, irrespective of period of stay for business travel requires prior approval of the Reserve Bank of India. Therefore, in the given case Mr. Shah, who wants to draw US \$ 40,000, is required to seek prior approval of the Reserve Bank of India.
- (b) **Anti-Competitive Agreements:** Under section 3 of the Competition Act, 2002 any agreement amongst enterprises of persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of service, shall be a void agreement if it causes or is likely to cause an appreciable adverse effect on competition. According to the problem, there are two conditions given in the agreement, which fall under the following stages-
- (i) **exclusive supply agreement:** includes 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.
- (ii) **exclusive distribution agreement:** includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.
- In view of the above provisions of the Competition Act, 2002 validity of the clauses of the agreement as given in the question can be determined as follows:
- Part (i) of the question restricts the dealer to deal in the goods of other manufacturers. Hence the proposed agreement is anti-competitive and void.
- Part (ii) of the question restricts the dealers not to sell the goods outside the territory assigned to them. Hence, the proposed agreement is anti competitive and void.
- (c) **Obligation of Banking Companies Etc.:** Section 12 of the Prevention of Money Laundering Act, 2002 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries of securities market. Every banking company, financial institution and intermediary shall-
- (a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other and where such series of transactions take place within a month. Such records shall be maintained for a period of ten years from the date of cessation of the transactions between the

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clients and the banking company or financial institution or intermediary, as the case may be.

- (b) furnish information of the above transactions within the prescribed time to the Director appointed under section 49 for the purposes of the Act.
- (c) verify and maintain the records of the identity of all its clients, in the prescribed manner.

As per above provisions, it is clear that PTM Limited did not fulfill its obligation under the Act. The company maintained such records for 5 years only and not 10 years as prescribed in the said Act.

- (d) **Minor as a Nominee:** A minor can be nominated as a nominee in life insurance policy by its holder. The only other requirement as per Proviso to Section 39 (1) of the Insurance Act, 1938 is that the policy holder is to appoint in the prescribed manner, an adult person to receive the money secured by the policy on behalf of the minor in the event of death of the policyholder during the minority of the nominee.

The given problem is based on above provision i.e. minor as a nominee. Here, Mr. Krishna wants to nominate Mr. Ram his minor son as a nominee for his life insurance policy. He can do so after fulfilling the requirement of the above provision.

- (e) **Meaning of restrictive and extensive:** When a word is defined to "mean" such and such, the definition is prima facie restrictive and it restricts the meaning of the word given in the definition section. But where the word is defined to "include" such and such the definition is prima facie extensive. Again when the word is defined as "means" and "includes" such and such, the definition would be exhaustive.

"Managing Director": The words "means" and includes' both given in the definition of "managing director" makes the definition prima facie exhaustive.

The definition interprets that such director who, by an agreement with the company, or of a resolution passed in general meeting or by its Board of Directors or, by virtue of its memorandum or articles of association, is entrusted with substantial powers of management will be called as Managing Director and definition also includes a director who is occupying the position of a Managing Director, by whatever name called, will also be called Managing Director.

Thus, the definition of Managing Director is prima facie exhaustive explaining in depth the persons who may specifically be called as Managing Director.

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