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**PAPER 4 : CORPORATE LAWS AND SECRETARIAL PRACTICE  
NOVEMBER 2001**

Question Nos. 1, 2 and 3 are compulsory  
Answer any four from the rest

**Question 1**

Answer any three of the following:

- (a) Mr. Influential is already a director of 19 companies. He being appointed as a director of another company named M/s Expensive Remedies Ltd. Advise Mr. Influential in regard to the following:
- (i) Restrictions on the number of directorships to be held by an individual and whether he can accept the new appointment in view thereof.
  - (ii) What are the companies to be excluded for the purpose of calculating the ceiling on the appointment of directors? **(6 marks)**
- (b) The articles of association of a company states that a director shall not vote in respect of a contract in which he is interested. In a resolution put up for approval of the shareholders, can a director exercise his voting right in favour of a contract in which he is interested? **(6 marks)**
- (c) State briefly the guidelines issued by SEBI for compliance by the companies making an initial public offer of equity shares proposing to list them on the Over the Counter Exchange of India. **(6 marks)**
- (d) Explain the principles of grammatical interpretation vis-à-vis logical interpretation especially in the context that the duty of the Court is to administer the law as it stands and not to find out whether the law is just or reasonable. **(6 marks)**

**Question 2**

Answer any **two** of the following:

- (a) Ms. Special Foods Ltd. has introduced a gift scheme whereby every buyer of 5 noodle packs will get one pencil box free. Alternatively, every buyer can exchange 5 empty noodle packs in return for a free pencil box. On the basis of a complaint that the company has indulged in an unfair trade practice, the MRTP Commission instituted a notice of enquiry. During the enquiry it was pointed out by the complainant that the company has increased the prices of noodles from Rs. 3 per pack to Rs. 4 per pack and the pencil box was really not free and it was covered by the increase in the price of noodles. On the other hand, the case of the company was that the increase in price was not sufficient even to recover the cost of production and marketing, nothing to speak of leaving a margin to recover even partly the cost of gift scheme. Examine in the light of decided cases whether the company has indulged in unfair trade practice. **(5 marks)**
- (b) Explain the powers of the MRTP Commission to grant ex-parte temporary injunction under the MRTP Act, 1969. State the grounds which should be pleaded before the Commission for the grant of an injunction. **(5 marks)**
- (c) Mr. X, an Indian national has failed to realize and repatriate foreign exchange worth more than Rs. 2 crores. Mr. X having realized that he had committed a contravention of the provisions of the Foreign Exchange Management Act, 1999, desires to compound the said offence. Advise Mr. X. **(5 marks)**

**Question 3**

Answer any **two** of the following:

- (a) Mr. G, an Indian national desires to obtain Foreign Exchange on current account transactions for the following purposes:
- (i) Payment of commission of exports made towards equity investment in wholly owned subsidiary abroad of an Indian Company.
  - (ii) Remittance of hiring charges of transponder.
  - (iii) Remittance for use of trade mark in India.
- Advise G whether he can obtain Foreign Exchange and, if so, under what conditions? **(6 marks)**

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- (b) The management of M/s Fair Weather Industries Ltd. has realized that the company has become a sick industrial company after the publication of its annual accounts for the year ended 31.3.2001. The company has made an application to the Board of Industrial and Financial Reconstruction (BIFR) as required under section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985. Some of the creditors after coming to know of the developments filed a petition in the High Court at Mumbai for the winding up of the company. Examine the claim of the creditors to wind up the company and the right of the company to claim protection in the light of the reference made to BIFR. **(6 marks)**
- (c) What is meant by 'operating agency'? State the duties of the 'operating agency' for preparation of inventory etc. under section 21 of the Sick Industrial Companies Act, 1985. **(6 marks)**

#### **Question 4**

- (a) A majority of the Board of Directors of M/s High Value Infotech Ltd. have realized that some of the business activities carried out in the name of the company are not in the interest of the company or its members. They want that the company should make an application to the Central Government to appoint an inspector to carry out an investigation so as to find out the whole truth. Explain the steps that should be taken to achieve the purpose and draft the application. **(9 marks)**
- (b) Some of the shareholders of M/s XYZ Co. Ltd. are contemplating penal action against the company and its directors for not posting dividend warrants even though the company declared a dividend of 50% on its equity shares a couple of months earlier. Examine the liability of the company and its directors for the said non-compliance. Also examine whether any defence can be raised by them against the liability. **(6 marks)**

#### **Question 5**

- (a) The Companies (Amendment) Act, 2000, has prescribed an additional duty on the Board of Directors to include in the Board's Report a 'director's responsibility statement'. Explain briefly the details to be furnished in the said statement. **(8 marks)**
- (b) M/s Rao and Rao, a firm of Chartered Accountants have to be appointed as the auditors of M/s ABC Co. Ltd., a Government Company. Explain the steps to be taken regarding the appointment and payment of remuneration to the auditors. **(7 marks)**

#### **Question 6**

- (a) A group of creditors of M/s XYZ Co. Ltd. makes a complaint to the Registrar of Companies, New Delhi, alleging that the management of the Company is indulging in destruction and falsification of the accounting records of the Company. The complaints request the Registrar to take immediate steps to seize the records of the Company, so that the management may not be allowed to tamper with the records. Examine the powers, if any, of the Registrar in such circumstances. **(8 marks)**
- (b) Some of the small shareholders of M/s Progressive Industries Ltd. approach you for advice regarding appointment of one of them as director of the company. Explain the meaning of a small shareholder and legal position regarding appointment of a director by such small shareholders. **(7 marks)**

#### **Question 7**

- (a) Mr. Stubborn is a director of M/s Doubtful Industries Ltd. He along with other two directors has been running the company for the past twenty years without declaring any dividends or giving any benefit to the shareholders. Frustrated by this, some shareholders are desirous of giving notice to pass a resolution with the support of other shareholders for his removal as a director in the Annual General Meeting of the Company to be held in the month of December 2001. State the procedure to be followed for the removal of Mr. Stubborn as a director and the right of Mr. Stubborn to defend his position. **(8 marks)**

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- (b) Mr. X is a director of M/s ABC Ltd. He has approached M/s Housing Finance Co. Ltd. for the purpose of obtaining a loan of Rs. 50 lakhs to be used for construction of building his residential house. The loan was sanctioned subject to the condition that M/s ABC Ltd. should provide the guarantee for repayment of loan installments by Mr. X. Advise Mr. X. **(7 marks)**

**Question 8**

- (a) M/s Over-ambitious Consultants Ltd. had, in course of its operations over the years, acquired various other ventures like plantations and tourism businesses. With a view to consolidate its core business activities, the management decided to hive off its non-core activities by demerging them with an associate company. Advise briefly the steps the management should take to achieve the purpose of demerger. **(8 Marks)**
- (b) A group of shareholders holding more than 15% of the paid up capital of M/s Fraudulent Traders Ltd. 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. Examine the merits of the petition in the light of judicial pronouncements made in this regard. **(7 Marks)**

**Question 9**

- (a) Examine with reference to the relevant provisions of the Companies Act, 1956, the validity / legality of the following: **(9 Marks)**
- (i) A meeting of the Board of Directors of OPQ Co. Ltd. due to be held on 30.9.2001 did not take place for want of quorum. As a result, the company did not hold any Board meeting for the quarter ended 30.9.2001 and there is a complaint that the company has violated the provisions of the Act in this regard.
  - (ii) M/s RST Computers Ltd. wants to file its documents with the Registrar of Companies in computer print out form.
  - (iii) M/s XYZ Co. Ltd. held its Annual General Meeting beyond the permissible time limit and the legality of the documents filed by the company has been questioned.
- (b) A listed Public Company was ordered to be wound up by the order the Bombay High Court. While ordering the winding up, the Court ordered the Official Liquidator to submit a preliminary report to the Court as per the provisions contained in the Companies Act. State briefly the details to be given in the preliminary report of the Official Liquidator. **(6 Marks)**