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

**May 2000**

Questions 1, 2 and 3 are compulsory.

Answer any four of the rest

**Question 1**

Answer any three of the following:

**(6 Marks)**

- a) The Board of Directors of M/s. Infotech Consultants Limited, registered in Calcutta, proposes to hold the next board meeting in the month of May 2000. They seek your advice in respect of the following matters:
- i. Can the board meeting be held in Chennai, when all the directors of the company reside in Calcutta?
  - ii. Whether the board meeting can be called on a public holiday and that too after business hours as the majority of the directors of the company have gone to Chennai on vacation?
  - iii. Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?
- b) **(6 Marks)**
- i. ABC Private Limited is a company in which there are eight shareholders. Can a member holding less than one-tenth of the share capital of the company apply to the Company Law Board for relief against oppression and mismanagement?
  - ii. It is alleged by the said member that the Directors of the Company have misused their position in making certain inter-corporate deposits which are against the interests of the company. Will the Company Law Board entertain application containing such allegation in the case of a private company?
- c) What are the defaults for which a stock-broker may be penalized under the provisions of Securities and Exchange Board of India Act, 1992 in respect of the dealings with the investors? State the factors that must be taken into account by the adjudicating officer while determining the quantum of penalty in such cases. **(6 Marks)**
- d) Explain the rule of 'beneficial construction' while interpreting the statutes quoting an example. **(6 marks)**

**Question 2**

Answer any **two** of the following:

- a) A company is alleged to have made certain misrepresentations in its prospectus about the benefit of investing in debentures issued by it. Examine with reference to the provisions of the Monopolies and Restrictive Trade Practices Act whether such misrepresentations would amount to unfair trade practice. **(5 marks)**
- b) State the ground on which and the authority to whom a company can apply seeking exemption from registration of certain restrictive trade practice agreements under the Monopolies and Restrictive Trade Practices Act. Draft a board resolution authorizing the secretary of the company to make such an application. **(5 marks)**
- c) M/s High Quality Leather Goods Limited has appointed various retailers to market their products. The retailers are paid commission on the following basis:

<b>Value of Goods Lifted in a Month (Rs.)</b>	<b>Rate of Commission</b>
Upto One Lakh	5%
Above One Lakh but Below Five Lakh	6%
Above Five Lakh but Below Ten Lakh	7%
Above Ten Lakhs	8%

In addition the retailers are allowed certain gifts ranging from Rs.10,000 to Rs.25,000 depending upon the quantity of goods purchased by the retailer. Examine whether the trade practice followed by the company can be considered as a restrictive trade practice under the MRTP Act, 1969.

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### Question 3

Answer any **two** of the following:

- a) ABC Textiles Limited have been incurring losses continuously from the financial year ended 31<sup>st</sup> March, 1994. Certain financial data as per the company's Balance Sheets are given below: **(6 Marks)**

Balance Sheet as at	Paid-up Share Capital (Rs. In Lakhs)	Free Reserves (Rs. In Lakhs)	Accumulated Losses (Rs. In Lakhs)
31.03.1992	100	70	NIL
31.03.1993	100	100	NIL
31.03.1994	100	80	NIL
31.03.1995	100	40	NIL
31.03.1996	100	20	NIL
31.03.1997	100	NIL	20
31.03.1998	100	NIL	60
31.03.1999	100	NIL	95

Examine with reference to the relevant provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, whether ABC Textiles Limited is a potentially sick industrial company.

- b) Examine the powers of BIFR regarding the appointment of special directors and the privileges available to such directors. **(6 Marks)**
- c) Under what circumstances and subject to what conditions can BIFR exercise its powers to take steps for winding up of a potentially sick industrial company and a sick industrial company? Is it obligatory on the High Court to order winding up of the company on the basis of opinion of BIFR in this regard? **(6 Marks)**

### Question 4

- (a) What is the specific advantage of Book-building process in connection with issue of securities by a company? State the guidelines issued by SEBI in this regard in respect of the following matters: **(8 Marks)**
- Determination of issue price and that of successful bidders.
  - Reservation for individual investors who have not participated in the bidding process and basis of allotment to such investors.
- (b) A public company having its registered office at Delhi proposes to maintain the register of members at the office of its registrar and transfer agents. State the legal requirements to be complied with by the company under the Companies Act to give effect to the proposal. Draft also the resolution in this regard. **(7 marks)**

### Question 5

- (a) XYZ Limited decided to terminate the services of Mr.X, who was employed as sales manager. It is apprehended by the company that the sales manager may not vacate the company's flat at Bombay. What action can be taken by the company under the Companies Act to regain possession of the flat? Is it necessary to take such action under the Companies Act before terminating the services of Mr.X? Will it make any difference if the flat is not owned by the company but taken on lease? **(8 marks)**
- (b) Examine the validity of the following proxies and suggest remedies where possible:
- L, a member of a private company, appoints B and C as proxies dividing his voting rights between them. B and C are not members of the company.
  - X, the director of Y Limited is authorized to represent Y limited at the general meeting of ABC Limited. He in turn appoints a proxy Z.
  - Y, a member of a company not having share capital, appoints a proxy. Articles of the company are silent as to the power to appoint proxies. **(7 marks)**

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**Question 6**

- (a)
- i. State the requirements under the Companies Act with regard to compliance of accounting standards and the disclosure to be made in case the profit and loss account and the Balance Sheet of the company do not comply with the accounting standards. What is the duty of the auditor of the company in this regard? **(5 marks)**
  - ii. The Profit and Loss account and Balance Sheet of AS Limited have been signed by two directors A and B. The board comprises of a third director C, who is also the managing director. The company has also engaged a full time secretary. Examine whether the authentication of the financial statements is in accordance with law. **(3 marks)**
- (b) The Comptroller and Auditor-General of India made certain adverse comments on the audited financial statements of a government company. Explain with reference to the relevant provisions of the Companies Act, whether it is possible for the government company to revise the audited but un-adopted financial statements in the light of the adverse comments made by the Comptroller and Auditor-General of India and also whether it is necessary for the board of directors to give explanations in the board's report in respect of such adverse comments. **(7 marks)**

**Question 7**

- (a) Mr.V, a chartered accountant is a Director in PQR Limited. The company proposes to appoint/engage the firm V and Co. in which Mr.V is a partner in one or more of the following capacities: **(8 Marks)**
- i. Consultants on regular retainer basis.
  - ii. Authorized representatives to appear before tribunals.
- Discuss whether the provisions of section 314 of the Companies Act are attracted in the above situations.
- (b) Can a company pay compensation to its directors for loss of office? Explain briefly the relevant provisions of the Companies Act, 1956 in this regard. **(7 marks)**

**Question 8**

- (a) The paid up share capital of ABC Limited is Rs. 5 lakhs consisting of 50,000 equity shares of Rs.10 each fully paid up. Certain members of the company holding the following shares requisitioned an extraordinary general meeting on 1.2.2000: **(8 Marks)**
- A – 2,250 shares  
B – 2,000 shares including 500 bonus shares  
C – 1,000 shares including 500 right shares
- The directors have failed to call the meeting on the pretext that the articles have not permitted the same. What is the course of action open to the aforesaid members? **(8 marks)**
- (b) M/s XYZ Limited was wound up with effect from 15.03.2000 by an order of the court. Mr.A, who ceased to be a member of the company from 1.6.1999, has received a notice from the liquidator that he should deposit a sum of Rs.5,000 as his contribution towards the liability on the shares previously held by him. In this context, explain whether Mr.A can be called a contributory and whether he can be made liable and whether there is any limitation on his liability. **(7 marks)**

**Question 9**

- (a) Answer the following with reference to a scheme of amalgamation of companies explaining the relevant provisions of the Companies Act, 1956:
- i. Whether companies being amalgamated must be companies registered in India.
  - ii. What is the majority required for approving the scheme of amalgamation in a meeting of members of a company called as per directions of the court? Is the scheme to be approved by preference shareholders?
  - iii. When will the court order dissolution of the transferor company? **(8 marks)**

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(b) What is meant by disclaimer of onerous property and how the same is exercised during winding up?  
Explain the circumstances under which such a disclaimer is not allowed. **(7 marks)**