
PAPER 4: COMPANY LAW AND SECRETARIAL PRACTICE
NOVEMBER-2005

Examinees are required to answer the question in the following manner:

- (a) Question Nos.1, 2 and 3 are compulsory.
- (b) Answer any four from the rest of the question.

Question 1

Answer any **two** of the following:

- (a) The Board of Directors of ABC Ltd., met thrice in the year 2004 and the 4th Meeting though called, could not be held for want of quorum. **(5 Marks)**
Examine with reference to the relevant provisions of the Companies Act, 1956, the following:
 - i. Whether any provision of the Companies Act, 1956 have been contravened?
 - ii. Is a Director bound to attend the Board Meeting and when his frequent absence from the Board Meeting may be excused?
- (b) Describe the provisions of the Securities Contracts (Regulation) Act, 1956 regarding the powers of the Central Government to supersede the Governing Body of a recognized Stock Exchange and the consequences of such supersession. **(5 Marks)**
- (c)
 - i. Delhi Stock Exchange wants to establish additional trading floor. Advise. **(5 Marks)**
 - ii. Complaints of unethical practices have been received against members of a recognized Stock Exchange by the Government. Examine whether the Government has any power to suspend the business of such a recognized Stock Exchange.

Question 2

- (a) Explain the meaning of “Capital Account Transaction” under the Foreign Exchange Management Act, 1999. State whether there are any restrictions in respect of the following transactions: **(7 Marks)**
 - i. Drawal of Foreign Exchange for payments due on account of amortization of loans in ordinary course of business.
 - ii. Purchase by a person resident outside India of shares of a company in India engaged in plantation activities.
- (b) TKM Exporters of New Delhi are engaged in Export Business. It made certain exports, but failed to realize and repatriate to India the foreign exchange due on its exports. The Adjudicating imposed a penalty under the provisions of Foreign Exchange Management Act, 1999 (FEMA). Being aggrieved by this penalty, the said exporter seeks your advice as to the authority to which appeal can be made and the time limit for making such appeals. You are required to advise on the matter. **(7 Marks)**
- (c) **(7 Marks)**
 - i. In a proceeding before the Competition Commission of India involving two pharmaceutical companies, the plaintiff requested the presiding officer to call upon the services of experts from the pharmaceutical sector to determine the truth of the allegations leveled by it against the respondent. The respondent opposed the request on the ground that such action can not be taken by the Competition Commission. You are required to state with reference to the provisions of the Competition Act, 2002, whether the contention of the respondent is tenable.
 - ii. The Central Government has formed an opinion that Mr.CBM (a member of the Competition Commission of India) has acquired such financial interest that it may affect prejudicially his functions as a member of the Competition Commission and it wants to remove him from his office. You are

required to state with reference to the provisions of the Competition Act, 2002, whether the Central Government can do so and if yes, how?

(7 Marks)

Question 3

Answer any **two** of the following:

- (a) An investor has complained to SEBI that he has not received the payment due to him from the stock broker registered with Calcutta Stock Exchange Association Ltd., The complainant has requested SEBI to take appropriate action against the stock broker. You are required to state with reference to the provisions of Securities and Exchange Board of India Act, 1992 the answer to the following: **(8 Marks)**
- What action SEBI can take against the stock broker on the compliant as stated above?
 - What is the procedure to be adopted and what are the factors that will be taken into account while taking such action ?
- (b) Following information is available from the records of Star Chemicals & Engineering Ltd., : **(8 Marks)**
- The Company is a closely held unlisted Company.
 - The paid up share capital of the Company since 1st April, 1999 is Rs.3.00 crores and its net worth as at 31st March, 2005 was Rs.5.00 crores as per audited Balance Sheet.
 - The Net Tangible Assets of the company as per last 3 (three) audited Balance Sheet as at 31st March, 2003, 2004 and 2005 were Rs.4.00 crores, 4.50 crores and 5.00 crores respectively, out of which monetary assets were less than Rs.50 lacs in each of three years.
 - The Company was incorporated in 1996 and commenced its business on 1st April, 1996 and since then it has earned good profits and it has not incurred any loss in any year in past.
 - The Company has not declared any dividend so far, but according to the profits earned so far, the management could have declared the dividend in each of the last five years.
 - The name of the Company was changed from Star Engineering Ltd., to its present name with effect from 1st October, 2004.

The Company wants to make a public issue of shares to raise Rs.20.00 crores by issuing equity shares at premium. For the purpose of including the information in the prospectus, the company has prepared its accounts for 12 months ended 30th September, 2005 showing segment-wise revenue, which reveals that revenue from Chemical segment is more than the revenue from Engineering segment

You are required to state the relevant guidelines issued by SEBI and your conclusion whether the company can make the desired issue of equity shares based on the facts stated above.

- (c) **(8 Marks)**
- Explain the rules relating to interpretation of Statutes, when the terms “notwithstanding” and “Subject to” are used in any provision of an Act.
 - State the effect of the words “notwithstanding anything contained in this Act” used in section 408 of the Companies Act, 1956, which vests certain powers in the Central Government to prevent oppression or mismanagement.

Question 4

(a) The last three year’s Balance Sheet of PTL Ltd., contains the following information and figures:

	As at 31.03.2003	As at 31.03.2004	As at 31.03.2005
	Rs.	Rs.	Rs.
Paid up capital	50,00,000	50,00,000	75,00,000
General Reserve	40,00,000	42,50,000	50,00,000
Credit balance in Profit and Loss Account	5,00,000	7,50,000	10,00,000
Debenture redemption reserve	15,00,000	20,00,000	25,00,000
Secured loans	10,00,000	15,00,000	30,00,000

On going through other records of the company, the following is also determined :

Net profit for the year
(as calculated in
accordance with the
provisions of Section 349
& 350 of the Companies
Act, 1956)

12,50,000

19,00,000

34,50,000

In the ensuing Board of Directors scheduled to be held on 5th November, 2005, among other items of agenda, following items are also appearing:

- (i) To decide about borrowing from Financial institution on long term basis.
- (ii) To decide about contributions to be made to Charitable funds.

(8 Marks)

Based on above information, you are required to find out as per the provisions of the Companies Act, 1956 , the amount upto which the Board can borrow from financial institution and the amount upto which the Board of Directors can contribute to Charitable funds during the financial year 2005-06 without seeking the approval in general meeting.

(b) Examine the validity of the following with reference to the relevant provisions of the Companies Act, 1956 and / or decided case laws: **(7 Marks)**

- i. Mr.G , a Director of Sam Limited was interested in a Contract to be entered into by the company. The Articles of Association of Sam Limited contained a clause, which prohibited the directors from voting on the resolution in respect of any contract in which he is interested. The matter in respect of the said contract was put up for approval of the shareholders in a general meeting. The general meeting was attended by Mr.G and he also voted on the resolution. Mr. G claims the he has a right to vote on the resolution in the General Meeting.
- ii. The Articles of Association of Big Limited provide that a meeting of the Board of Directors of the company shall be held at 11.00 a.m. on the last day of every quarter ending 31st March, 30th June, 30th September, and 31st December. Relying on such a clause in the articles, the company did not send notices to the directors in respect of the board meeting held on 30th September, 2005. Some of the directors have questioned the validity of the board meeting on the ground that individual notices have not been sent to the directors.

Question 5

(a) A group of shareholders has approached you for advice regarding the affairs of LPM Paper Mills Ltd., . According to them, the management of the company is not carrying out its functions in accordance with the prudent commercial practice and if the affairs of the company are allowed to run in future in the same manner, the company's solvency would be in danger. They want that a Special Audit be conducted to find out the actual nature of the transactions. **(8 Marks)**

- i. You are required to state with reference to the provisions of the Companies Act, 1956 as to when a special audit can be directed and by whom.
- ii. Draft an application to be submitted to the appropriate authority in this respect.

(b) (i) State the provisions of the Companies Act, 1956 regarding the appointment of auditors in the following cases: **(7 Marks)**

- a. A company, whose Annual General Meeting was held on 30th September, 2005, but it failed to appoint the auditor.
- b. A Company, whose financial year shall end on 31st December, 2005 and whose auditor (appointed in last Annual General Meeting held on 30th March, 2005) had died on 15th October, 2005.

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- (ii) State the considerations under the Companies Act, 1956 upon which the Central Government can prohibit the appointment of Sole Selling Agents in certain cases.

Question 6.

- (a) **(8 Marks)**
- i. An existing inter-state Co-operative society seeks your advice regarding the papers to be submitted to the Registrar of Companies for its registration as a Producer Company under the provisions of the Companies Act, 1956. You are required to prepare a list of such papers.
- ii. A group of individuals eligible to form a Producer Company within the meaning of the Companies Act, 1956 has entrusted you with the job of preparing the Memorandum of Association of the proposed Producer Company. You are required to state the matters, which are required to be included in such Memorandum of Association.
- (b) Some small shareholders of TRG Ltd., a company listed with Mumbai Stock Exchange, want to appoint Mr.Raj, who is holding 1,000 equity shares of Rs.10 each of the Company as a Director as their representative on the Board of Directors of the said company. You are required to state the relevant provisions of the Companies Act, 1956 in respect of such proposal to appoint Mr.Raj as a Small Shareholder's Director. **(7 Marks)**
- Also state whether Mr.Raj can be appointed as a Small Shareholders' Director if he is already a Small Shareholder's Director in two other companies.

Question 7

- (a) The Central Government came into possession of certain facts and documents, which indicated that some of the managerial personnel of a company concerned with the management of the affairs thereof are acting in a manner, which is not desirable and if allowed to carry on, it is likely to cause serious injury to the interest of the trade, industry and business to which the company pertains. You are required to state the circumstances and manner in which the Central Government can initiate the process of removal of managerial personnel under the provisions of the Companies Act, 1956. **(8 Marks)**
- (b) OGC Ltd., was a supplier of raw material to SAM Ltd., which could not make payment to OGC Ltd., owing to huge losses and financial constraints. Ultimately, SAM Ltd., went into liquidation and Official Liquidator was appointed. OGC Ltd., filed a suit for recovery of its dues. The court awarded a decree in favour of OGC Ltd.,. Armed with the Court's decree, OGC Ltd., approached the Official Liquidator to pay the amount to it in preference over dues of the workmen. The workmen protested the demand of OGC Ltd., and contended that their dues rank pari passu with the Secured Creditors and will override all other claims of other creditors even where a decree has been passed.

You are required to ascertain the validity of the argument of the workmen in the light of the provisions of the Companies Act, 1956 and the decided cases on the subject. **(7 Marks)**

Question 8

- (a) HPC Ltd., for a number of years was in various types of business. In order to exit from its non-core business, its management decided to hive off the business of Food Processing by demerging the said business with an associate company, namely, BCD Ltd., You are required to advise briefly, with reference to the provisions the Companies Act, 1956, the steps the management should take to give effect to the proposed demerger. **(8 Marks)**
- (b) Following transactions are made by a public company. You are required to examine the same whether these transactions can be termed as loans to Directors requiring the approval of the Central Government as required U/s. 295 of the Companies Act, 1956: **(7 Marks)**

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- i. A salary advance of Rs.5,000 to an employee, who is the wife of the managing director of the company.
 - ii. Sale of company's flat to a director at prevailing market price, out of which the director pays 50% (fifty per cent) immediately and contracts to pay balance amount in 10 equal annual instalments.
 - iii. Making a deposit with the landlord under a licence arrangement for securing a residential accommodation for the managing director of the company.
 - iv. Loan to its 100% (One hundred per cent) subsidiary company.

Question 9

(a) PNT Ltd., is a company, which is listed with Mumbai Stock Exchange. Its 18th Annual General Meeting was held at Mumbai on 30th September, 2005 in respect of financial year ended 31st March, 2005, whereat all the usual business required to be conducted by a company under the provisions of the Companies Act, 1956 were carried out. Following further information is also available: **(10 Marks)**

- i. The company has total 8 Directors (including the Chairman) out of which 2 Directors are not liable to retire by rotation.
- ii. The company has its registered office at Mumbai and a branch at Kolkata.
- iii. From the audited annual accounts for year ended 31st March, 2005, it is observed that Directors have proposed a dividend of 20% on equity share capital
- iv. 75% of the shares of the Company are held in dematerialized form and balance in physical form.
- v. The accounts of Kolkata Branch of the company are audited by a firm of Chartered Accountants, who are not the Statutory Auditors of the Company.

Based on the above, you are required to draft the minutes of the proceedings of the Annual General Meeting of PNT Ltd.,

(b) S Ltd., is a subsidiary company of H Ltd.,. The Financial year of H Ltd., is from 1st April to 31st March whereas the financial year of S Ltd., is 1st July to 30th June every year. This is now causing difficulties particularly in view of the requirement of reporting and circulating the consolidated annual accounts as required by Accounting Standard AS-21. The Board of Directors of H Ltd., decides that the accounting year of S Ltd., for the year 1st July, 2005 to 30th June, 2006 be extended from present 12 months to 21 months, i.e. 1st July, 2005 to 31st March, 2007, so that the financial years of the holding company and the subsidiary company end on the same date.

State the provisions of the Companies Act, 1956 in this respect.

(5 Marks)