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**PAPER 4: CORPORATE LAWS AND SECRETARIAL PRACTICE**  
**MAY 2003**

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

**Question 1**

Answer any two of the following:

- (a) Mr. Busybody has been appointed as a Director of ACE Automobiles Limited on 2<sup>nd</sup> April, 2002. The article of association of the company provides that the qualification of a director shall be holding of at least 10 shares in the company. Mr. Busybody applied for 10 equity shares of the company on 31<sup>st</sup> March, 2002. But the shares were allotted only at the Board meeting held on 19<sup>th</sup> August, 2002. Examine with reference to the relevant provisions of the Companies Act, 1956 whether Mr. Busybody has complied with the requirements relating to qualification shares. If not, what are the consequences? **(5 Marks)**
- (b) M/s AB & Company, a member of a recognized stock exchange proposes to buy and sell shares of a particular company on behalf of investors as well as on their own account. They seek your advice as to restrictions, if any under Securities Contracts (Regulations) Act, 1956 for dealing in securities on their own account. Advise **(5 Marks)**
- (c) Rampur Stock Exchange wants to get itself recognized. Explain: **(5 Marks)**
- 1) Who enjoys the power to recognize stock exchange?
  - 2) What information will have to be provided with the application for recognition?

**Question 2**

Answer any **two** of the following:

- (a) Examine whether the following branches can be considered as a 'Person resident in India' under Foreign Exchange Management Act, 1999: **(7 Marks)**
- 1) ABC Limited, a company incorporated in India established a branch in London on 1<sup>st</sup> January, 2003.
  - 2) M/s XYZ, a foreign company, established a branch at New Delhi on 1<sup>st</sup> January, 2003. The branch at New Delhi controls a branch at Colombo.
- (b) Mr. Ramesh is an exporter of goods and services. Explain briefly his duties under Foreign Exchange Management Act, 1999 with regard to the following: **(7 marks)**
- 1) Furnishing of information relating to such exports
  - 2) Realization and repatriation of foreign exchange on such exports
- (c) Explain the circumstances under which a Director retiring at an annual general meeting shall be deemed to have been re-appointed even though no such appointment has been made. **(7 Marks)**

**Question 3**

Answer any **two** of the following:

- (a) SEBI received a complaint from an investor that he has not received the payment due to him from a recognized stock broker. Explain the action that can be taken by SEBI against the stock broker under the provisions of Securities and Exchange Board of India Act, 1992 and the factors that will be taken into account while taking such action **(8 marks)**
- (b) Super Chemicals Limited, a closely held unlisted company, is in need of about Rs.20 crores for financing its expansion programme. The company has not declared any dividend so far though it has made good profits from the commencement of commercial operations on 1<sup>st</sup> January, 1995. The paid up capital of the company was increased to Rs.3.5 crores on 1<sup>st</sup> April, 1998. The net worth of the company as per Latest audited Balance sheet as at 31<sup>st</sup> March, 2002 is Rs.5 crores. The company seeks your advice as to its

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eligibility to raise Rs.20 crores through public issue of equity shares at a premium. Advice with reference to relevant guidelines issued by SEBI. **(8 Marks)**

- (c) Explain the rules relating to interpretation of the terms 'subject to' and 'notwithstanding' used in the provisions of an Act. State the effects of the term 'notwithstanding anything contained in this Act' used in Section 408 of the Companies Act empowering the Central Government to prevent oppression or mismanagement. **(8 Marks)**

#### **Question 4**

- (a) Mr. Ram is a Director of ABC Limited and PQR Limited. ABC Limited was regular in filing annual returns, but did not file annual accounts for the year ended 31<sup>st</sup> March, 2002. Further ABC Limited failed to pay interest on loans taken from public financial institutions from 1<sup>st</sup> January, 2002 onwards and also failed to repay the matured deposits on due from 1<sup>st</sup> April, 2002 onwards.

Mr. Ram is proposed to be appointed as additional director of MN Limited on 1<sup>st</sup> June, 2003. MN Limited has sought a declaration from Mr. Ram to the effect that the disqualification specified in Section 274(1)(g) of the Companies Act, 1956 is not applicable in his case. Mr. Ram seeks your advice on the following:

- 1) Whether it is in order for him to give the declaration sought by MN Limited in view of the defaults committed by ABC Limited.
- 2) Whether he can continue as a Director in XYZ Limited and PQR Limited and also seek reappointment when he retires by rotation at an annual general meetings of respective companies to be held in September, 2003

Advice explaining the relevant provisions of the Companies Act, 1956. Would your answer be different, if Mr. Ram resigned his office of director in ABC Limited on 31<sup>st</sup> December, 2002? **(8 marks)**

- (b) A Private company having a paid-up capital of Rs.6 crores has been converted into a public company. The company proposes to constitute an Audit Committee. Draft a broad resolution covering the provisions of the Companies Act, if any, in this regard: **(7 Marks)**
1. Members of the audit committee
  2. Chairman of the audit committee
  3. Quorum for a meeting of the committee
  4. Any two main functions of the committee

#### **Question 5**

- (a) M/s Supreme Technologies Limited proposes to appoint Mr. E and Mr. F as whole time directors for a period of three years with effect from 1<sup>st</sup> June, 2003. The company proposes to pay a consolidated salary of Rs.80,000 per month to each of them

Mr. D, managing director of the company, has been appointed for a period of five years with effect from 1<sup>st</sup> January, 2001 on a remuneration payable in the form of commission at the rate of five percent of net profit subject to a minimum remuneration of Rs.80,000 per month

The Company seeks your advice on the steps to be taken to comply with the requirements of Section 269 read with Schedule XIII to the Companies Act, 1956 with regard to the proposed appointment of Mr. E and Mr. F as whole time directors. Advice explaining the relevant provisions. **(8 Marks)**

- (b) **(7 Marks)**
- i. What is the liability of an auditor for failure to point out in his report that dividend is paid out of capital?
  - ii. Can an auditor be disqualified for indebtedness in the following cases?
    - a. Where he is recovering his fees on a progressive basis even though the job is not complete
    - b. Where the auditor's firm has purchased goods from the auditee company and not paid for them for them for over six months.

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**Question 6**

- (a) The Profit and Loss Account and Balance Sheet of a listed company have not been prepared in accordance with some of the applicable accounting standards. Examine the responsibility of the directors and auditors in this regard under the Companies Act, 1956. **(8 Marks)**
- (b) Examine with reference to the provisions of the Companies Act, 1956 whether the following companies can be treated as foreign companies: **(7 Marks)**
- A company incorporated outside India having a share registration office at Mumbai
  - Indian citizens incorporated a company in Singapore for the purpose of carrying on business there.

**Question 7**

- (a) M/s XYZ Limited is being wound up by the court. The official liquidator after realization of the assets has an amount of Rs. 56, 00,000 at his disposal towards payment of creditors of the company. Details of creditors are as under:

	Rs.
(i) Dues to secured creditors	40,00,000
(ii) Dues to workers	30,00,000
(iii) Taxes and duties payable to Government authorities	4,00,000
(iv) Unsecured Creditors	80,00,000

Since the available amount is insufficient to meet the claims of all creditors, explain the procedure to be followed for payment of dues as provided in the Companies Act, 1956, assuming that the company has created a charge on all the assets of the company in favour of the secured creditors. **(8 marks)**

- (b) Advise the company with reference to the relevant provisions of the Companies Act about sending notice of board meetings to the following directors:
- Mr. Rohit, a director, who intimates his inability to attend the next board meeting.
  - Mr. Bibin Ram, who has gone abroad for four months and an alternate director has been appointed in his place,
  - Mr. James is a director residing abroad representing the foreign collaborator and the Articles of Association of the company provide for sending notice to such directors. **(7 Marks)**

**Question 8**

- (a) Overambitious Limited became sick. The share holders and creditors of the company passed resolution in meetings convened by the approving a scheme of reconstruction of the company. The scheme provides for sale proceeds for payment of outstanding wages, sales tax dues and repayment of part of the loan taken from the bank. The unsecured creditors will have to forego 50% of their claims against the company and receive debentures for the balance amount. Advise the directors about the steps to be taken to give effect to the proposed scheme inspite of objections raised by a few shareholders and creditors **(8 Marks)**
- (b) XYZ Company Ltd. In its annual general meeting appointed all its directors by passing one single resolution. No objection was made to the resolution. Examine the validity of appointment of directors explaining the relevant provisions of the Companies Act, 1956. Will it make any difference; If XYZ Company was a private company? **(7 Marks)**

**Question 9**

- (a) Ram & Co. Ltd having paid up share capital of Rs.40 lakhs appointed on 1<sup>st</sup> January, 1995 Lakshman and Co. Pvt. Ltd as sole selling agent for a period of 5 years with effect from 1<sup>st</sup> January, 1995 with the approval of the company in the general meeting. The directors of Lakshman and Co. Pvt. Ltd were holding 40,000 equity shares of Rs.10 each fully paid up in Ram and Co. Pvt. Ltd since 1<sup>st</sup> December, 1994.

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State with reasons whether the appointment is valid. Will your answer be different, if Lakshman and Co. Pvt. Ltd had acquired the aforesaid shares only on 1<sup>st</sup> December, 1995? **(8 Marks)**

- (b) Advice the Board of Directors of a public company about their powers in respect of the following proposals explaining the relevant provisions of the Companies Act, 1956: **(7 Marks)**
- (i) Donation of Rs.5,00,000 to a hospital established exclusively for the benefit of employees
  - (ii) Buy back of shares of the company for the first time up to 10% of the paid up share capital
  - (iii) Delegating to the managing director of the company the power to invest surplus funds of the company in the shares of some companies.