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**PAPER 4 : COMPANY LAW AND SECRETARIAL PRACTICE**

**MAY 1999**

Questions 1, 2 and 3 are compulsory.

Answer any four of the rest.

**Question 1**

Answer any **three** of the following:

- (a) The articles of association of M/s PQR Private Limited provide that 5 members present in person constitute the quorum. The total number of members of the company is also 5. A general meeting of the company was held on 25.1.1999 and it was attended by 4 members as the 5<sup>th</sup> member had expired sometime earlier. In the said meeting a resolution was passed by a majority of 3 to 1 removing one Mr. Doubtful as a director for indulging in anti company activities. Mr. Doubtful challenges the validity of the resolution on the ground of lack of quorum in terms of the articles of association. Discuss with reference to the relevant provisions of Companies Act whether the contention of Mr. Doubtful is correct. **(6 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:
- i. Mr. Rohit, a Director, states that he will not be able to attend the next board meeting.
  - ii. Mr. Bipin Ram goes abroad for four months from 4.1.1999 and an alternate director has been appointed in his place.
  - iii. Mr. James is a director residing abroad representing the foreign collaborator and the Articles of Association of the company provides for sending notice to such directors. **(6 Marks)**
- (c) Explain the guidelines issued by SEBI for the purpose of preventing fraudulent encashment of refund orders in the case of public issues of shares and debentures. **(6 Marks)**
- (d) Explain the rule of 'Reasonable construction' while interpreting the statutes. How would you reconcile in case one part of the executed lease deed is in conflict with the other part? **(6 Marks)**

**Question 2**

Answer any **two** of the following:

- (a) The manufacturer of a famous milk product advertised a scheme called "Hidden Wealth Prize Offer". Under the scheme gift coupons were inserted in some bottles of the milk product and the buyers of such bottles were entitled to a gift. There was no evidence to show that the price of the product was increased to cover the cost of gift.  
Discuss whether the manufacturer has indulged in unfair trade practice and whether the said practice is prejudicial to public interest. **(8 Marks)**
- (b)
- i. State, applying the principle of law as enunciated in section 2(g) of the MRTP Act, whether the following are inter-connected undertakings:
    - (X) Dolly & Company with Dolly, Jolly and Nancy as its partners owns "Merry Dot". Singh Company with Norman, Ferguson and Nancy as its partners owns "Beauty Box". Are "Merry Dot" and "Beauty Box" interconnected undertakings?
    - (XX) "Glassy" is owned by Ghose & Sons Limited, "Glamour" is owned by Datta & Company, which is a firm. A & Co. Ltd., and M& Co. Ltd., are two partners in Datta & Co. These two partner – bodies corporate and Ghosh & Sons Ltd. Are under the same management. Are "Glassy" and "Glamour" inter-connected undertakings? **(4 Marks)**

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ii. Mr. Ram Paul, a non-resident Indian approaches you for advice regarding investment in India on non-repatriation basis in shares and debentures of companies as portfolio investments. Advise Mr. Ram Paul about the restrictions, if any, under the Foreign Exchange Regulation Act.

(c) Mr. Ram Prasad is a Director of a company which is the subsidiary of a foreign company. He went abroad to attend a meeting convened by the parent company. He took with him U.S. \$ 400 and earned U.S. \$ 500 for attending the meeting.

Consider the following situations and state whether Mr. Ram Prasad is liable U/s. 9(1) of F E R A:

- (i) He placed U.S. \$ 500 to the credit of his brother's account in a foreign bank. His brother is residing abroad.
- (ii) He spends U.S. \$ 900 on his own self while abroad. **(8 Marks)**

### Question 3

Answer any **two** of the following:

(a) Examine the present criteria for ascertaining sickness of an industrial company under the Sick Industrial Companies (Special Provisions) Act and whether you have any suggestions to identify the sickness of a company early so as to take better preventive measures. **(7 Marks)**

(b) BIFR wants to appoint Mr. Govinda Narayanan as a special director in James Luck Company Ltd., a sick industrial company. But such an appointment by NIFR might have the effect of exceeding the maximum number of directors provided in the articles of association of the company. Examine with reference to the provisions of SICA whether the appointment of Mr. Govinda Narayanan as a director is valid. What are the immunities provided in SICA for such special director? **(7 Marks)**

(c) Explain the powers of BIFR under the Sick Industrial Companies (Special Provisions) Act to sell a part or whole of any industrial undertaking of the sick industrial company. **(7 Marks)**

### Question 4

(a) A group of shareholders consisting of 25 members to file a petition before the Company Law Board for relief against oppression and mismanagement by the Board of Directors of M/s Fly By Night Operators Ltd. The company has a total of 300 members and the group of 25 members holds one-tenth of the total paid-up share capital accounting for one-fifteenth of the issued share capital. The main grievance of the group is that due to mismanagement by the board of directors, the company is incurring losses and the company has not declared any dividends even when profits were available in the past years for declaration of dividend. Advise the group of shareholders regarding the success of (i) getting the petition admitted and (ii) obtaining relief from the Company Law Board. **(7 Marks)**

(b) After serious disagreements and difference of opinion among the shareholders of the company in the last annual general meeting, some of the directors took the steps as noted below. Discuss the validity and effect if the following:

- i. Mr. John, the Managing Director sends his notice of resignation.
- ii. Mr. Paul, an ordinary director, had sent his resignation, but withdrew it before the board meeting was held for accepting his resignation. **(6 Marks)**

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**Question 5**

- (a) The Managing Director of M/s Speculative Builders Ltd. Has resigned as the company was not doing well and also incurring losses. The Board of Directors has decided to appoint Mr. Reliable aged 71 years as the new Managing Director, because of his proven track record of, nearly 50 years, turning sick companies into profitable ones. The only condition put forth by Mr. Reliable is that he should be paid the maximum permissible salary and perquisites as provided in the Companies Act with out requiring the approval of Central Government. The effective capital of the company is Rs. 20 crores. Advice the company about (i) the procedure to be followed for the appointment of Mr. Reliable and (ii) the quantum of remuneration payable to him.
- (b) Draft a board resolution to give effect to the following decision taken by the Board of Directors of M/s Handerson Gem and Company Limited: (6 Marks)
- The board is dissatisfied with the performance of Mr. Indra Sen, Managing Director and has decided to terminate his contract of service from 1.6.1999 and to pay compensation for loss of office. He has been appointed as Managing Director for a period of three years with effect from 1.1.1998.

**Question 6**

- (a) M/s. Take It Easy Holdings Ltd., has filed the annual accounts for the year ended 31.3.1998 with the Registrar of Companies, Calcutta. The registrar, after examination of the accounts issued a show cause notice to the company and its directors why prosecution proceedings should not be launched for not disclosing true and fair view of the state of affairs of the company. After careful examination you find that the registrar is justified in issuing the show cause notice. Advise as to how the company and its directors can save themselves from the prosecution proceedings under the provisions of the Companies Act. (7 Marks)
- (b) M/s. Sunset Constructions Limited is being wound up by the court. The official liquidator after realization of the assets has an amount of Rs.28,00,000 at his disposal towards payment to the creditors of the company. The list of creditors is given below: (6 Marks)
- |                                                         | Rs.       |
|---------------------------------------------------------|-----------|
| i. Dues to secured creditors                            | 20,00,000 |
| ii. Dues to workers                                     | 15,00,000 |
| iii. Taxes, etc., payable to the Government authorities | 2,00,000  |
| iv. Unsecured creditors                                 | 40,00,000 |

Since the available amount is insufficient to meet the claims of all the 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.

**Question 7**

- (a) James Brown, Blue Brown, Vasisht Beg and Ramen Roy are the directors of John Brown and Company Limited. Vasisht Beg and Ramen Roy did not attend the board meeting which was properly convened. At the said board meeting two additional directors were appointed. They are wife and brother of James Brown and Blue Brown respectively, the directors who attended the board meeting. Explain with reference to the relevant provisions of the Companies Act whether the directors who attended the board meeting as entitled to vote on the subject matter and whether the appointment of additional directors is valid. (7 Marks)
- (b) The board of directors of M/s All India Film Producers and Exhibitors Association Ltd., have passed a resolution to the effect that no member who is indulging in activities detrimental to the interests of the company be permitted to examine the records or obtain certified copies thereof. A member of the

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company who is also a member of the Rival Association demands inspection of the register of members and minutes of general meetings and certified true copies thereof. The company refuses the inspection, etc, on the strength of the resolution referred to above. Examine the correctness of refusal by the company in the light of the provisions of the Companies Act and the remedial action, if any, that can be taken by the aggrieved member in this case. **(6 Marks)**

**Question 8**

- (a) The concept of “Public Interest” has been making rapid inroads into the Indian Company Law. **(7 Marks)**  
Survey very briefly five of such provisions enshrined in the Act.
- (b) A company incorporated outside India decides to establish a place of business in India. State the documents that are required to be filed by such foreign companies under the Companies Act soon after establishment of a place of business in India. **(6 Marks)**

**Question 9**

- (a) State the disclosure requirements, if any, under Schedule VI to the Companies Act, 1956 in respect of the following: **(9 Marks)**
- i. Loans received from directors.
  - ii. Loans received from director’s relatives.
  - iii. Debts due by directors towards goods supplied and advances made by the company.
  - iv. Debts due by partnership firms in which the directors or relatives of directors are partners.
  - v. Debts due by companies in which the directors or their relatives are directors or members.
  - vi. Loans and advances received from and given to a subsidiary company and the partnership firm in which the subsidiary company is a partner.
  - vii. Remuneration received by a director of a company from its subsidiary company.
  - viii. Commission paid to selling agents including sole selling agents.
- (b) State the procedure for the following, explaining the relevant provisions of the Companies Act: **(4 Marks)**
- i. Appointment of first auditor when the Board of Directors did not appoint the first auditor within one month of the date of registration of the company.
  - ii. Removal of first auditor before the expiry of his term.