
**PAPER 4: CORPORATE LAWS AND SECRETARIAL PRACTICE
NOVEMBER 2006**

Question No.1,2 and 3 are compulsory
Answer any four questions from the rest of the question.

Question 1

Answer any **two** of the following:

- a. M/s. Star Health Specialties Limited owns a Multi-specialty Hospital in Chennai. Dr. Hamilton, a practicing Heart Surgeon, has been appointed by the company as its non-executive ordinary director and it wants to pay him fee, on case to case basis, for surgery performed on the patients at the hospital. A question has arisen whether payment of such fee to him would amount to payment of managerial remuneration to a director subject to any restriction under the Companies Act, 1956. Advise the company, which seeks to ensure that the same does not contravene any provision of the Companies Act, 1956 **(5 Marks)**
- b. The shares of MLM Ltd., were listed in Cochin Stock Exchange. The stock exchange de-lists the shares of the company. The aggrieved company approaches you to know the remedy available to the company. Give your suggestion to the company keeping in view the provisions of the Securities Contracts (Regulation) Act, 1956. **(5 Marks)**
- c. Explain the powers, which can be exercised by the Securities and Exchange Board of India under the Securities Contracts (Regulation) Act, 1956, while approving the schemes for corporation and demutualization submitted by recognized stock exchanges, so that there is segregation of ownership and management from the trading right of members of such stock exchanges. **(5 Marks)**

Question 2

Answer any **two** of the following:

- a. Mr.Loma, an Indian National desire to obtain foreign exchange for the following purposes: **(7 Marks)**
 - i. Payments to be made for securing insurance for health from a company abroad.
 - ii. Payment of commission on exports under Rupee State Credit Route.
 - iii. Gift remittance exceeding US Dollars 10,000Advise him whether he can get foreign exchange and if so, under what condition ?
- b. Mrs. Kamala, a resident in India is likely to inherit an immovable property in U.S.A from her father, who is a resident outside India. Advise Mrs.Kamala about the restrictions, if any, in this regard under the Foreign Exchange Management Act, 1999 explaining the relevant provisions of the Act,. Will your answer be different, if she is likely to inherit foreign securities? **(7 Marks)**
- c. **(7 Marks)**
 - i. Mr.ZPM was appointed as a Members of the Competition Commission of India by Central Government. He has a professional experience in international business for a period of 12 years, which is not a proper qualification for appointment of a person as a member. Pointing out this defect in the constitution of commission, Mr.YKJ, against whom the commission gave a decision, wants to invalidate the proceedings of the commission. Examine with reference to the provisions of the Competition Act, 2002 whether Mr.YKJ will succeed.
 - ii. ABC Ltd., made an initial public offer of certain number of equity shares. Examine whether these shares can be considered as "Goods" under the Competition Act, 2002 before allotment.

Question 3

Answer any **Two** of the following :

a. State the circumstances under which Securities and Exchange Board of India may exercise the following powers: **(8 Marks)**

i. Prohibit a company from issuing prospectus, any offer document or advertisement soliciting money from public for the issue of securities.

ii. Pass cease and desist order in respect of any listed company.

Explain the remedies available under Securities and Exchange Board of India Act, 1992 to companies aggrieved by the above orders of SEBI.

b. XYZ Automobiles Limited intends to make a public issue of 2,00,00,000 equity shares of Rs.10 each through the 100% book building process indicating a price band. **(8 Marks)**

You are required to answer the following with reference to the SEBI (Disclosure and Investor Protection) guidelines:

i. What is the price band that can be indicated in the red herring prospectus, if the floor price is proposed to be fixed at Rs.300 per equity share?

ii. What are the restrictions, if the company wants to revise the price band during the bidding period?

iii. How the shares are to be allocated to different categories of investors like Qualified Institutional buyers, Retail individual investors, etc.?

c. There is an apparent difference between section 292 of the Companies Act, 1956, which permits the board to delegate its power to make loans and section 372A of the Companies Act, which requires approval of loan by a resolution passed at a board meeting with the consent of all the directors present at the meeting. How would you interpret these two provisions applying the rule of harmonious construction? **(8 Marks)**

Question 4

a. Mr. Adam, a 15% shareholder of a company and other shareholder have lost confidence in the Managing Director (MD) of the company. He is a director not liable to retire by rotation and was re-appointed as Managing Director for 5 years w.e.f. 1.4.2005 in the last Annual General Meeting of the Company.

(8 Marks)

Mr. Adam seeks your advise to remove the MD after following the procedure laid down under the Companies Act, 1956.

i. Specify the steps to be taken by Mr. Adam and the company in this behalf:

ii. Draft a suitable resolution to be passed for removal of MD;

iii. It is necessary to state reasons to support the resolution for his removal?

b. Registrar of Companies has issued a show cause notice to the company and its directors to show cause as to why prosecution be not filed against them for not appointing a qualified Company Secretary, in contravention of the provisions of section 383A of the Companies Act, 1956. According to the company, there is adequate justification for not appointing the Secretary as it is a closely held company with only 7 shareholders and there is no adequate work for him. Further, the company cannot afford to pay him the salary, which will not be less than Rs.15,000 to 20,000 p.m.

What is the remedy available to the company and its directors—

(8 Marks)

i. Before any prosecution is filed by ROC?

ii. After the prosecution is filed by ROC in the Magistrate's Court?

Question 5

a. M/s. Raman Limited having a paid up share capital of Rs. 5 crores owns a agency of Cement Corporation of India Ltd., and proposes to supply cement, on credit, to an M/s. Raman is a common, Director in both the companies. **(8 Marks)**

State the requirements of the Companies Act, 1956, if any, to be complied with by the company on the facts of this case.

Will it make any difference, if—

- i. M/s. Raman Enterprises Private Limited were a public company.
 - ii. M/s. Raman Limited were carrying on real estate business and it proposes to sell a flat to M/s. Raman Enterprises Private Ltd., for Rs.50 lakhs?
- b. The official liquidator of ABC Limited (in liquidation) instituted misfeasance proceedings U/s. 543 of the Companies Act, 1956 against “A”, a director of the company in liquidation. During the pendency of misfeasance proceedings “A” died. **(7 Marks)**

What is meant by misfeasance? Is it possible for the official liquidator to implede the legal representatives of “A” and continue the proceedings against them?

Question 6

- a. Bush and Toney Private Limited approached you seeking your opinion on the following appointments relating to Directors and their relatives. **(8 Marks)**
- i. Appointment of Mr.Somen (relative of one of the Directors) as the Managing Director of the company on a monthly remuneration of Rs.35,000 and other perquisites as are currently being allowed to other executive of the company.
 - ii. Appointment of Mr.Raman (relative of one of the Directors) as the general Manager – Sales of the Company on a consolidated monthly remuneration of Rs.30,000.
 - iii. Appointment of Mr.Kabi (relative of one of the Directors) as an Accounts Manager of the company on a consolidated monthly remuneration of Rs.17,000.
- Express your opinion explaining the relevant provisions of the Companies Act, 1956.
- b. XYZ Dairy Products Producers Company Limited proposes to shift its Registered Office from Housur in Tamil Nadu to Bangalore in Karnataka. Explain the requirements under the Companies Act, 1956 to give effect to this proposal. **(7 Marks)**

Question 7

- a. Messrs Ahimsa Private Limited was incorporated in the year 2001 under the Companies Act, 1956 by 3 brothers, namely, Amit, Anil and Aklesh. All the three were Promoter-Directions named in the Articles of Association and subscribed for 100 shares each in the company through Memorandum of Association. Thereafter, from time to time, further shares were allotted in proportion of one – third to each of them and in due course, the company started earning substantial profits. Due to greed of money, the two brothers, namely, Amit and Anil, joined hands together to assume complete control of the company, leaving their brother, Akhlesh in lurch. Both the brothers got further shares allotted to themselves, thereby their joint shareholding increased from 66 2/3% to 90%, while the shareholding of Akhlesh got reduced from the erstwhile 33 1/3% to 10%. No notice of any Board Meeting was sent to Akhlesh, who was sidelined and was also removed as a Director.

Aggrieved by the decisions taken by his two brothers at his back, Aklesh seeks your advice for taking out appropriate proceedings before the court or judicial authority of competent jurisdiction. Also suggest the nature of reliefs he may claim while filing his case. **(8 Marks)**

- b. Mr.XYZ is the Managing Director of M/s.ABC Limited and also BCD Limited. PQR Limited decides to appoint him as the Managing Director of the company. State the legal requirements under the Companies Act, 1956 to give effect to the proposed appointment. Draft a resolution for the appointment

Question 8

- a. The scheme of amalgamation was approved by overwhelming majority of the members of the merging companies, namely, ABC Ltd., and XYZ Ltd., at meetings called as per directions of the Court. When the scheme of amalgamation was awaiting sanction of the court, the exchange ratio was questioned by a small group of dissenting shareholders of ABC Ltd.,. The exchange ratio was fixed by a firm of reputed Chartered Accountants. Examine with reference to the Court rulings, whether the dissenting shareholders will succeed.
Would answer be different, if the exchange ratio was objected to by the Central Government and not by the members of the merging companies.?
- b. Premier Housing Finance Company Limited is prepared to give housing loans to the employees of Supreme Chemicals Limited subject to the condition that the loans are guaranteed by Supreme Chemicals Limited. Supreme Chemicals Limited is not a listed company and the company will be exceeding the limits prescribed under the Companies Act, 1956 by providing such guarantee. The company desires to give the guarantee early as part of employees' welfare measure without waiting for the next annual general meeting, which is due only after eight months. Advise the company about the legal requirements under the Companies Act, 1956 to give effect to the above proposal. What would be your advice, if the company was required to provide security instead of guarantee?

Question 9

- a.
- i. Articles of Association of a listed company has fixed payment of sitting fee for each Meeting of Director subject to maximum of Rs.10,000. in view of increased responsibilities of independent directors of listed companies, the company proposes to increase the sitting fee to Rs.25,000 per meeting. Advise the company about the requirements under the Companies Act, 1956 to give effect to this proposal.
- ii. Ram & Company was appointed as auditor of ABC Limited at the Annual General Meeting held on 30th September, 2004. Can Ram & Co., continue as auditor of the company in case the next annual general meeting has not been held in time? What would be the position in case the next annual general meeting was held on 30th September, 2005, but adjourned without considering the business of appointment or re-appointment of auditor?
- b. Explain the legal position in respect of the following with reference to the provision of the Companies Act, 1956: **(7 Marks)**
- i. XYZ Limited, having one Indian subsidiary company and an overseas subsidiary company, attached to its Balance Sheet documents mentioned under section 212 in respect of its Indian subsidiary company only.
- ii. Statutory auditors of a public company did not verify the correctness of the particulars furnished in the Board's Report in respect of certain employees under section 271(2A)