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

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

**Question 1**

Answer any **two** of the following:

- (a) The maximum number of Directors of each of the following Companies as per their Articles of Association is 11. **(5 Marks)**
- (i) ABS Company Ltd.,
  - (ii) DSP Trading Private Ltd.,
  - (iii) Traders Association (a Company registered U/s. 25 of the Companies Act, 1956)
  - (iv) Hindustan Paper Ltd.,( a Government Company U/s. 617 of the Companies Act, 1956).

The Board of Directors of the Company wants to increase the number of Directors to 15.

State with reference to the provisions of the Companies Act, 1956 whether the Directors can do so.

- (b) Mr.Patel has transferred his share of a listed company registered in his name to Mr.Mehta. Mr.Mehta has failed to get the share registered I his name before the company declared, and paid the dividend on the shares. Examine with reference to the provisions of Securities Contracts (Regulation) Act, 1956 whether Mr.Patel is entitled to retain the dividend even though he has transferred the shares before declaration of dividend. **(5 Marks)**
- (c) SEBI is of the opinion that in the interest of investors it is desirable to amend the rules of XYZ Stock Exchange prohibiting the appointment of broker-member as President of the stock exchange. Explain with reference to be provisions of the Securities Contracts (Regulations)Act, 196 whether it is possible for SEBI to amend the rules of the Stock Exchange, if the rules are not amended by the Stock Exchange. **(5 Marks)**

**Question 2**

Answer any **two** of the following:

- (a) Examine whether the following transactions are permissible under Foreign Exchange Management Act, 1999: **(7 Marks)**
- (i) Payments of remuneration to foreign technician.
  - (ii) Remittance of dividend to non-residents.
- State also the procedure to be followed with regard to payment of dividend to non-residents.

- (b) Mr.Ram, a citizen of India, left India for employment in U.S.A on 1<sup>st</sup> June, 2002. Mr.Ram purchased a flat at New Delhi for Rs.15 lakhs in September, 2003. his brother, Mr.Gopal employed in New Delhi, also purchased a flat in the same building in September, 2003 for Rs.15 lakhs. Mr.Gopal's flat was financed by a loan from a Housing Finance Company and the loan was guaranteed by Mr.Ram. Examine with reference to the provisions of Foreign Exchange Management Act, 1999 whether purchase of flat and guarantee by Mr.Ram are Capi tal Account transactions and whether these transactions are permissible. **(7 Marks)**

- (c) With the knowledge of all the Directors of a Public Limited Company, a mortgage was created over the property of the company in respect of a loan given by the brother of one of the Directors of the company. But the interested Director neither disclosed his interest nor abstained from voting at the Board Meeting, when the loan transaction was approved. Examine with reference of the provisions of the Companies Act, 1956 whether there is any ban on such contracts and whether non-disclosure of interest and voting by the interested Director would make the contract void. **(7 Marks)**

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### Question 3

Answer any **two** of the following:

- (a) Following information and figures are noticed from the Annual Accounts for the year ended 31<sup>st</sup> March, 2003 of MNP Limited, a Listed Company: **(6 Marks)**
- (i) Authorized share capital as Rs.10 crores comprising of one crore Equity shares of Rs.10 each.
  - (ii) Paid up share capital of Rs.4.5 crores comprising of 40,00,000 Equity shares of Rs.10 each fully paid up and 10,00,000 Equity shares of Rs.10 each called and paid up to Rs.5 each. The total paid up capital is paid up in cash.
  - (iii) Securities Premium Account Rs.10 crores.
  - (iv) 2,50,000 fully convertible debentures of Rs.100 each. These debentures are due for conversion on 30<sup>th</sup> June, 2003 in full into fully paid Equity Shares of Rs.10 each in the ratio of two equity shares for one debenture.
  - (v) General Reserve Rs.15 crores.
  - (vi) Fixed asset revaluation reserves Rs.2.5 crores.

It was further ascertained that the partly paid shares were made fully paid by 30<sup>th</sup> June, 2003.

The Directors of MNP Limited proposes to issue bonus shares in the ratio of 1:1.

Advise the Directors on the matter with reference to the guidelines issued by SEBI on bonus issue. What will be your advice, if the company has defaulted in the matter of payment of interest on fixed deposits?

- (b)
- (i) Mr.Raman, an investor is not satisfied with the dealings of his stock broker, who is registered with Delhi Stock Exchange. Mr. Raman approaches you to guide him regarding the avenues available to him for making a complaint against the stock broker under Securities and Exchange Board of India Act, 1992 and also the grounds on which such complaint can be made. You are required to briefly explain the answer to his queries. **(4 Marks)**
  - (ii) How will the Chairperson and other members of the Competition Commission of India be appointed? State whether the Chairperson shall be only a person, who has been or is qualified to be, a judge of a High Court. **(4 Marks)**
- (c)
- (i) Explain the usefulness of “Heading and Title of a Chapter in an Act and marginal notes of a Section” as internal aids in interpreting the provisions of a Statute. **(4 Marks)**
  - (ii) ABC Forgings Limited proposes to make a loan of Rs.5 lakhs to PQR Limited, a company in which two Directors of ABC Forgings Limited hold 30 per cent of the total Equity Share Capital. The proposed loan together with the inter-corporate loans and investments already made do not exceed 60 per cent of paid up share capital and 100 per cent of free reserves of ABC Forgings Limited. **(4Marks)**

Examine the above proposal with reference to the provisions of Section 372a of the Companies Act, 1956. whether the provisions of Section 295 containing the marginal notes of “Loans to Directors, etc.,” would also be applicable in this case?

### Question 4

- (a) Mr.PMC is a Director in 14 Public Limited Companies as on 30<sup>th</sup> July, 2003. He continues to be so till 24<sup>th</sup> September, 2003. The following companies appoint Mr.PMC as a Director at their respective Annual General Meetings held on dates mentioned against their names. **(8 Marks)**
- (i) PQR Ltd.,, (AGM held on 29<sup>th</sup> September, 2003)
  - (ii) BCD Private Ltd., (AGM held on 25<sup>th</sup> September, 2003)
  - (iii) City Traders Association (A Company registered under section 25 of the Companies Act, 1956 – AGM held on 26<sup>th</sup> September, 2003)

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(iv) TSP Ltd., (AGM held on 25<sup>th</sup> September, 2003).

You are required to state with reference to the relevant provisions of the Companies Act, 1956 the options available to Mr.PMC in respect of accepting or not accepting the appointment of Director of the above companies.

- (b) Examine whether the payment of following remuneration to non-executive Directors (Directors who are neither in the whole-time employment of the company nor Managing Director) is in accordance with the provisions of the Companies Act, 1956: **(7 Marks)**
- (i) Sitting fee payable to Directors is increased from Rs.3,000 to Rs.6,000 per meeting by amending the Articles of Association.
  - (ii) Commission payable to Non-executive Directors is calculated on the basis of book profits arrived at after providing for depreciation as per straight line method.
  - (iii) Guarantee commission has been paid to one of the Non-executive Directors for having guaranteed the term loans obtained from a Financial Institution.

### Question 5

- (a) ABC Company Limited was amalgamated with and merged in XYZ Company Limited. Some workers of ABC Company Limited refuse to join as workers of XYZ Company Limited and claim compensation for premature termination of service. XYZ Company Limited resists the claim on the ground that their services are transferred to XYZ Company Limited by the order of amalgamation and merger and, therefore, the workers must join service of XYZ Company Limited and cannot claim any compensation. Examine whether the worker's contention is correct. **(8 Marks)**
- (b) The Board of Directors of XYZ Limited appointed Mr.A as a Director in the casual vacancy caused by resignation of Mr.X. Mr.A is proposed to be re-appointed as a Director at the Annual General Meeting, when he vacates his office. Examine with reference to the relevant provisions of the Companies Act, 1956 whether Mr.A can be considered as a "Retiring Director" and state the legal requirements to be fulfilled to give effect to the proposed appointment of Mr.A as a Director at the Annual General Meetings. **(7Marks)**

### Question 6

- (a) An existing society seeks your advice as to its eligibility to be registered as a "Producer Company" under the Companies Act, 1956 and the procedure to be followed for such registration. Advise explaining the relevant provisions of the Companies Act, 1956. **(8 Marks)**
- (b) The Board of Directors of a company proposes to charge the Chief Accountant of the company with the duty of ensuring compliance with the provisions of the Companies Act, 1956 relating to maintenance of proper books of account and preparation of Balance Sheet and Profit and Loss Account in accordance with the law. Draft a Board Resolution for this purpose.  
What are the consequences in case of default, when such a resolution is passed?  
Is it possible for the Board of Directors to pass such a resolution, when the company is managed by Managing Director? **(7 Marks)**

### Question 7

- (a) A group of shareholders of Badwill Machineries Ltd., filed an application before the Company Law Board (CLB) alleging various acts of fraud and mismanagement by Mr.Bigfish, the Managing Director of his associates. During the course of hearing before the CLB, the authorized representative of the said company contended that the alleged transactions had taken place several years ago and the company has already removed the Managing Director, who was responsible for such transactions and hence there is no case before the CLB to interfere in the working of the company. Against the submissions on behalf of the company, the applicants submitted that although the fraudulent transactions were done in past and the

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Managing Director has been removed, but the company is still controlled by the persons, who are in league with the erstwhile Managing Director and are working as his bench men.

State the merits of the applicant's arguments and the powers of the CLB.

**(8 Marks)**

- (b) S Ltd., is a subsidiary company of H Ltd., . The financial year of H Ltd., is from 1<sup>st</sup> April to 31<sup>st</sup> March, whereas the financial year of S Ltd., is 1<sup>st</sup> July to 30<sup>th</sup> 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 Standards AS-21. The Board of Directors of H Ltd., decides that the account year of S Ltd., for the year 1<sup>st</sup> July, 2002 to 30<sup>th</sup> June, 2003 be extended from present 12 months to 21 months, i.e., 1<sup>st</sup> July, 2002 to 31<sup>st</sup> March, 2004, 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 and mention the steps to be taken in this regard.

**(7 Marks)**

### Question 8

- (a) How would you deal with the following situations in the matter of appointment of Auditors? **(8 Marks)**
- (i) The shareholding of L.I.C and U.T.I increased from 23 per cent to 27 per cent of the subscribed share capital of the company after issue of notice of the Annual General Meeting, but before the date of the Annual General Meeting.
  - (ii) Ordinary resolution is passed at the Annual General Meeting of a company when a special resolution is required to be passed for appointment of Auditor?
- (b) Sunflow Limited decided to terminate the service of Mr.Ram, who was employed as Sales Manager. However, the company feels that the Sales Manager may not vacate the company's flat at Mumbai. What action can be taken by the company under the Companies Act, 1956 to regain possession of the flat? Is it necessary to take such action under the Companies Act before terminating the Services of Mr.Ram? Will it make any difference, if the flat is not owned by the company, but taken on lease? **(7 Marks)**

### Question 9

- (a) What is meant by "Corporate Governance"? Explain, how the provisions of the Companies Act, 1956 relating to Audit Committee will help in achieving some of the objectives of "Corporate Governance". **(8 Marks)**
- (b) Super Chemicals Private Limited has discontinued its business since 1992. Its entire capital has been lost. It has some liabilities, but negligible assets. The company has been regular in filing Annual Returns and Balance Sheets. The Directors proposes to apply to the Registrar of Companies for striking the name of the company U/s.560 of the Companies Act, 1956 on the ground that it is a defunct company.

State the circumstances under which the name of the company can be struck off U/s. 560 of the Act and the steps to be taken by the Directors of the company to get the name of the company struck off.

**(7 Marks)**