Paper-13: CORPORATE LAWS AND COMPLIANCE

	Learning objectives	Verbs used	Definition
LEVEL C	KNOWLEDGE What you are expected to know	List	Make a list of
		State	Express, fully or clearly, the details/facts
		Define	Give the exact meaning of
	COMPREHENSION What you are expected to understand	Describe	Communicate the key features of
		Distinguish	Highlight the differences between
		Explain	Make clear or intelligible/ state the meaning or purpose of
		Identity	Recognize, establish or select after consideration
		Illustrate	Use an example to describe or explain something
	APPLICATION How you are expected to apply your knowledge	Apply	Put to practical use
		Calculate	Ascertain or reckon mathematically
		Demonstrate	Prove with certainty or exhibit by practical means
		Prepare	Make or get ready for use
		Reconcile	Make or prove consistent/ compatible
		Solve	Find an answer to
		Tabulate	Arrange in a table
	ANALYSIS How you are expected to analyse the detail of what you have learned	Analyse	Examine in detail the structure of
		Categorise	Place into a defined class or division
		Compare and contrast	Show the similarities and/or differences between
		Construct	Build up or compile
		Prioritise	Place in order of priority or sequence for action
		Produce	Create or bring into existence
	SYNTHESIS How you are expected to utilize the information gathered to reach an optimum conclusion by a process of reasoning	Discuss	Examine in detail by argument
		Interpret	Translate into intelligible or familiar terms
		Decide	To solve or conclude
	EVALUATION How you are expected to use your learning to evaluate, make decisions or recommendations	Advise	Counsel, inform or notify
		Evaluate	Appraise or asses the value of
		Recommend	Propose a course of action

Paper-13: CORPORATE LAWS AND COMPLIANCE

Full Marks: 100 **Time Allowed: 3 Hours**

This paper contains 3 questions. All questions are compulsory, subject to instructions provided against each question. All workings must form part of your answer. Assumptions, if any, must be clearly indicated.

Question 1: Answer all questions **[20 Marks]**

(a) Yusuf, an employee of ABC Ltd., was appointed as an alternate director. In the meantime, the original director returned and wanted to attend the Board meeting. Advise. 3

(b) Is there any maximum limit on shareholding by the promoter in an Indian Insurance company, as per Insurance Act, 1938? 3

(c) The Promoters of a Company to be registered under the Companies Act, 1956 having its main object of carrying on the business as manufacturer and stockist of Iron and Steel, proposes that the names of the Companies is to be "ABC Steel Bank Limited". You are required to state with reference to the provisions of the Banking Regulation Act, 1949, whether the said Company with the proposed name can be registered. 3

(d) 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 levelled by it against the respondent. The respondent opposed the request on the ground that such action cannot 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. 3

(e) The object clause of the Memorandum of Association of LSR Private Ltd, Lucknow authorized to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. J and traded in steel and incurred liabilities to Mr. J. The Company, subsequently, refused to admit the liability to J on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to J. Give reasons in support of your answer. 3

(f) Can CSR be integrated with decision making? 3

(g) What are the functions of the supervisory board under Cromme Code. 2

Answer:

(a) An alternate director shall not hold office for a period longer than that permissible to the original director. The alternate director shall vacate his office when the original director returns back to India, irrespective of the fact as to whether the original director attends the Board meetings or not. Thus, after an original director comes back to India, only he can attend the Board meetings. The alternate director would automatically cease to be director.

In the given case, the contention of the original director is correct and he is entitled to attend the Board meeting.

(b) As per section 6AA of Insurance Act, 1938, no promoter shall at any time hold more than 26% or such other percentage as may be prescribed, of the paid-up equity capital in an Indian Insurance company.

(c) As per section 7(1), no company other than a banking company shall use as part of its name or, in connection with its business any of the words "bank", "banker" or "banking".

In the given case, the main object of the proposed company is to carry on the business of manufacturing and acting as stockist of iron and steel. The proposed company is not a banking company as defined u/s 5(c) of the Act.

In view of the provisions of section 7(1), the name 'ABC Steel Bank Limited' is not permissible.

(d) Section 36 of the Competition Act, 2002 empowers the Commission to call upon the experts from the fields of economics, commerce, accountancy, international trade or from any other discipline to assist the Commission in the conduct of any inquiry before it.

Therefore, in the given case, the contention of the respondent is not correct. The Commission has the power to call upon the services of experts from the pharmaceutical sector to determine the truth of the allegations levelled by the Plaintiff against the respondent.

(e) The company is not liable to J because of the following reasons:

- since the partnership agreement for trading in steel is an ultra vires contract, and an ultra vires contract is void ab initio, and is not binding on the company or the other party;
- since the power to enter into partnership is not an ancillary or incidental power;
- since such power can be legally exercised by the company only if the object clause of memorandum expressly authorises the company to enter into partnership

(f) Integration of CSR in decision making:

- CSR is viewed as a comprehensive set of policies, practices and programs that are integrated into decision-making processes throughout the organisation. Therefore, an entity should incorporate CSR initiatives in its core business operations and strategies.
- The organisation should set specific goals for CSR.
- At the stage of planning, the organisation should lay down the measures for evaluating the progress from time to time.
- As far as possible, the goals should be laid down in quantifiable terms.

(g) The supervisory board carries out a number of important functions as follows:

1. It provides independent advice and supervision regularly to the management board on the management of the business;
2. The management board and the supervisory board should ensure that there is a long-term succession plan in place;
3. The supervisory board may delegate some duties to other committees, which include compensation and audit committees;
4. The chairman of the supervisory board, who should not be the chairman of the audit committee, co-ordinates work within the supervisory board and chairs its meetings and attends to the affairs of the supervisory board externally.

Question 2: Answer any four questions **[60 Marks]**

Question 2(a)

(i) Dev Limited issued a notice for holding of its annual general meeting on 7th November, 2014. The notice was posted to the members on 16.10.2014. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not validly called. Referring to the provisions of the Act, decide -

(a) Whether the meeting has been validly called?

(b) If there is a shortfall in the number of days by which the notice falls short of the statutory requirement, state and explain by how many days does the notice fall short of the statutory requirement?

(c) Can the shortfall, if any, be condoned?

(ii) The promoters of a public company propose to have the strength of the Board of directors as eleven. They also propose to make the managing director and whole time directors as directors not liable to retire by rotation. They seek your advice on the following matters:

(a) Maximum number of persons, who can be appointed as directors not liable to retire by rotation.

(b) How many of the remaining directors will have to retire by rotation every year at the annual general meeting?

(iii) Advise 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, 2013;

- **Buy-back of shares of the company upto 10% of the paid up equity share capital.**

[5+6+4 = 15]

Answer:

(i)

Day of holding the AGM	7th November, 2014.
Day of despatch of notice	16th October, 2014.
Days to be excluded	■ Day of holding the AGM (i.e., 7th November, 2014) ■ Day of despatch of notice (16th October, 2014) ■ 2 days for service of notice (i.e., 17th and 18th October, 2014).
Number of days notice given	= 19 days.
Number of days notice required u/s 101	= 21 days.
(a) AGM has not been validly called	- since 21 days' notice of the AGM has not been given to the members.
(b) The notice is short	- by 2 days.
(c) The shortfall may be condoned	- if consent is given for such shorter notice by at least 95% of the members entitled to vote at such AGM.

(ii) As per section 152(6), not less than 2/3rd of total number of directors shall be the directors whose period of office is liable to determination by retirement by rotation (any fraction contained in that 2/3rd shall be rounded off as 1). Such directors are referred to as rotational directors. However, the articles of a company may provide for greater number of rotational directors. In other words, in no case, the number of non-rotational directors shall exceed 1/3rd of total number of directors.

As per section 152(6), at the first annual general meeting and every subsequent annual general meeting, 1/3rd (or nearest to 1/3rd) of directors liable to retire by rotation shall retire from the office.

Applying the provisions of section 152(6) to the given case –

(a) At least 8 directors shall be rotational directors (2/3rd of 11 is 7.33; taken as 8 since not less than 2/3rd of total directors shall be rotational directors). Accordingly, only 3 directors can be appointed as non-rotational directors. Therefore, it is permissible to appoint managing director and whole time director as non-rotational directors.
(b) In case 3 directors are appointed as non-rotational directors, 1/3rd of rotational directors shall retire at the ensuing annual general meeting, i.e. 3 directors (1/3 of 8 is 2.67; nearest to 2.67 is 3). These 3 directors shall be eligible for reappointment.

(iii) As per section 179(1), the Board is entitled to exercise all such powers as the company is authorised to exercise. Similarly, the Board is authorised to do all such acts and things as the company is authorised to do. However, the provisions of section 179(1) are subject to the other provisions of the Companies Act, 2013 (e.g. Sections 179(3), 180,181 and 182 of the Companies Act, 2013).

The Board shall exercise the powers mentioned under section 179(3) only by means of a resolution passed at a meeting of the Board. Among other powers, the power to buy-back as referred to in section 68 is also included in section 179(3). Section 68 empowers the Board to buy-back not more than 10% of the total paid-up equity capital and free reserves of the company.

Therefore, in the present case, the Board is authorised to buy-back the shares of the company upto 10% of the paid up equity share capital, provided the resolution authorising the buy-back is passed at a Board meeting and not by circulation.

Question 2(b)

(i) 500 equity shares in 'XYZ Limited' were acquired by Mr. 'B'. But the signature of Mr. 'A', the transferor, on the transfer deed was forged. Mr. 'B', after getting the shares registered by the company in his name, sold 200 equity shares to Mr. 'C on the strength of the share certificate issued by 'XYZ Limited'. Mr. 'B' and Mr. 'C were not aware of the forgery. What are the rights of Mr. 'A', 'B' and 'C against the company with reference to the aforesaid shares?

(ii) Apple Company Limited has 10 directors on its board. Two of the directors have retired by rotation at an Annual General Meeting. The place of retiring directors is not so filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned to a later date. At this adjourned meeting also the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'. Advice:
(a) Whether in such a situation the retiring directors shall be deemed to have been re-appointed at the adjourned meeting?

(b) In case at the adjourned meeting, the resolutions for re-appointment of these directors were lost?
(c) Whether such directors can continue in case the directors do not call the Annual General Meeting?

(iii) What is the required quorum for holding a Board meeting? Examine the following cases:
(a) In a Board meeting, only 3 directors were present out of the total of 11 directors. None of the 3 directors was interested in any of the items of the agenda. Examine the validity of meeting.
(b) In a meeting of the Board, out of the total of 11 directors, 7 directors were present of which only 2 directors were not interested in one of the transactions. How should the meeting deal with the matter?

[4+5+6 =15]

Answer:

(i)

Rights of A He can compel the company to restore his name on the register of members (since a forged transfer is without any legal effect and the true owner continues to be the member of the company).

Liabilities of B 'B' is liable to compensate the loss caused to the company since he had lodged the forged transfer deed, even though he was not aware of the forgery.

Rights of C
- The company can refuse to register 'C as a member.
- The company is liable to 'C since the company had issued share certificate to B, and therefore, the company shall be stopped from denying the liability accruing to it from its own default.

(ii) The provisions relating to automatic reappointment are contained in section 152(7) of the Companies Act, 2013. Applying these provisions, the given problem is answered as under:

(a) As per Section 152(7), if the vacancy in the place of retiring director is not filled up and the meeting has not resolved not to fill the vacancy, the annual general meeting shall adjourn to the next week at the same time and place or if that day is a public holiday, then to next succeeding day which is not a public holiday.
If at the adjourned meeting also, the vacancy in the place of retiring director is not filled up and the meeting has not resolved not to fill the vacancy, the retiring director shall be deemed to be reappointed.
Thus, in the given case, both the retiring directors shall be deemed to have been reappointed at the adjourned annual general meeting.

(b) In case at the adjourned meeting, the resolutions for reappointment of retiring directors were lost, there is no question of reappointment or automatic reappointment. They shall have to vacate their offices.

(c) In case the AGM is not called, the directors liable to retire cannot continue beyond the last day the AGM ought to have been held, and so their offices shall be vacated as such, as was held in B. R. Kundra v Motion Pictures Association.

(iii) The provisions relating to quorum for a Board meeting are contained in section 174. Unless the articles provide for a higher quorum, the quorum shall be l/3rd of the 'total strength' (any

fraction contained in that I/3rd shall be rounded off to one) or two directors whichever is higher [Section 174(1)]. However, section 174(3) states that where at any time the number of interested directors (present in the Board meeting) exceeds or is equal to 2/3rd of the 'total strength' (any fraction contained in that 2/3rd shall be rounded off as one), the number of disinterested directors present at the meeting, being not less than two, shall be the quorum.

(a) In the instant case, 1/3rd of 11 comes to 3.67; the fraction 0.67 shall be rounded off to 1. Thus, at least 4 disinterested directors must be present in the Board meeting. However, only 3 directors are present in the Board meeting.
Moreover, there is no interested director present in the meeting and so the benefit of section 174(3) cannot be availed. Therefore, the quorum was not present and so the meeting has not been validly held.

(b) In the given case, the required quorum comes to 4 directors, but only 2 disinterested directors are present. So, the quorum is not present as per section 174(1).
2/3rd of the 'total strength' comes to 8 (Being 2/3rd of 11 is 7.33; the fraction 0.33 shall be rounded off to 1). Since the number of interested directors (present in the Board meeting) is only 5, section 173(3) is not attracted. Thus, the remaining 2 directors who are not interested do not constitute a quorum and hence the Board meeting cannot be validly convened.

Question 2(c)

(i) ABC Company Limited at a general meeting of members of the company passes an ordinary resolution to buy-back 30% of its equity share capital. The articles of the company empower the company for buy-back of shares. The company further decides that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares. Explaining the provisions of the Companies Act,2013 and stating the sources through which the buy-back of companies own shares be executed, examine:
(a) Whether company's proposal is in order?
(b) Would your answer be still the same in case the company, instead of 30%, decides to buy-back only 20% of its equity share capital?

(ii) Asim, a 15% shareholder of a company and other shareholders 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.
Mr. Asim seeks your advice to remove the MD after following the procedure laid down under the Companies Act, 2013.
(a) Specify the steps to be taken by Mr. Asim and the Company in this behalf;
(b) Is it necessary to state reasons to support the resolution for his removal?

(iii) Prithvi Limited is paying remuneration to its non-executive directors at the rate of one percent of the net profits of the company distributed equally among all the non-executive directors. Is it possible for the company to pay minimum remuneration to non-executive directors besides sitting fees in the event of loss in a financial year? Answer with reference to Companies Act, 2013.

[4+(4+4)+3 = 15]

Answer:

(i)
(a) The proposal of the company to buy-back its shares is not valid
- since the company has passed OR instead of SR, as required u/s 68;
- since the company proposes to buy-back 30% of the equity share capital which exceeds the statutory ceiling of 25% of total paid up equity capital;

- since the company proposes to buy-back out of the proceeds of an earlier issue of same kind of shares, which is prohibited u/s 68.

(b) The decision to buy-back 20% of equity share capital shall not be valid
- since buy-back by passing OR is violative of Sec. 68;
- since buy-back out of the proceeds of an earlier issue of same kind of shares is prohibited u/s 68.

(ii) Removal of a non-rotational managing director is possible, since section 169 empowers the members to remove any director, whether he is a rotational or non-rotational director, or managing director, whole time director or a non-executive director.

The given problems are answered as under:

(a) Steps to be taken by Mr. Asim

Mr. Asim shall have to give a special notice to the company in accordance with the provisions of section 115 of the Companies Act, 2013. In the special notice, Mr. Asim shall propose a resolution for removal of the managing director. The special notice must be -

(i) given to the company not earlier than 3 months before the date of the general meeting but at least 14 days before the general meeting (excluding the day on which such notice is given and the day of the general meeting);

(ii) signed by member(s) holding not less than 1% of total voting power or member(s) holding paid up share capital of ₹ 5 lakh.

Steps to be taken by the company

(a) The company shall send a copy of special notice to the managing director.

(b) The managing director has a right to make a representation against his removal.

(c) Representation given by the managing director, if any, shall be sent by the company to every member at least 7 days before the general meeting.

(d) If the representation is not sent to the members, the representation shall be read at the general meeting.

(e) The general meeting shall be held.

(f) The managing director shall have a right to be heard at the meeting. The right to make an oral representation is in addition to written representation.

(b) Whether the special notice must disclose the reasons for removal of a director.

It was held in LIC v Escorts Ltd. (1986) 59 Comp Cas 548 that it is not necessary for a member to state the grounds of removal of a director at the time of calling the extraordinary general meeting. The Court held that, under section 102, it is the duty of the Board to disclose the material facts in the explanatory statement. Neither section 169 nor section 102 requires a member to disclose the reasons for the resolutions proposed at the meeting. In other words, a member cannot be compelled to disclose the reasons for proposing a resolution for removal of a director.

Therefore, non-disclosure of reasons for removal of managing director does not make a special notice invalid. Accordingly, the special notice given by Mr. Asim is as per the requirements of section 169 of the Companies Act, 2013, and the company is required to act on such notice.

(iii) As per second proviso to Sec 197(1) of Companies Act, 2013, the remuneration of non-executive directors shall not exceed -

(a) 1% of net profits, if the company has employed a managing director or whole time director or manager; or

(b) 3% of net profits, if the company has not employed any managing director, whole

time director and

Remuneration to a non-executive director may be paid only if the company has made profits [sec 197(3) of Companies Act, 2013]. Schedule V does not empower a company to pay remuneration to its non-executive directors where the company has suffered a loss.

There is no prohibition on payment of sitting fees even where the company has not earned any profits or its profits are inadequate.

Question 2(d)

(i) A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide.

(ii) The last three years' balance sheets of Fantastic Ltd. contain the following information and figures:

	As at 31.03.2013 (₹)	As at 31.03.2014 (₹)	As at 31.03.2015 (₹)
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 & 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
₹ 12,50,000 - As at 31.03.2013
₹ 19,00,000 - As at 31.03.2014
₹ 34,50,000 - As at 31.03.2015

In the ensuing Board meeting scheduled to be held on 5th November, 2015, among other items of agenda, following items are also appearing:
(a) To decide about borrowings from financial institutions on long-term basis.
(b) To decide about contributions to be made to charitable funds.

Based on above information, you are required to find out as per the provisions of the Companies Act, 2013 the amount upto which the Board can borrow from financial institutions and the amount upto which the Board of directors can contribute to charitable funds during the financial year 2015-16 without seeking the approval in general meeting.

(iii) Explain the power of the Registrar to conduct inspection and inquiry as per the provisions of Companies Act, 2013.

[4+6+5 = 15]

Answer:

(i) The prospectus is misleading
- since non-disclosure of the fact that the company was making losses and that the dividends were paid out of past year profits gave a false impression that the company was making profits;
- since suppression of such fact might have affected investor's decision to subscribe for

shares.
- since the prospectus does not disclose all the material facts truly, honestly and accurately.

The allottee of shares is entitled to avoid allotment since the allottee has a right to rescind the contract of allotment of shares if he had relied and acted on the prospectus, i.e., he subscribed for shares after being influenced by a misleading prospectus [Rex v Kylsant].

(ii) The given problem relates to sections 180(1)(c) and 181 of the Companies Act, 2013.

(a) As per section 180(1)(c) of the Companies Act, 2013, without the prior consent of the members in general meeting by a special resolution, the Board of directors of a company shall not borrow moneys where the borrowings (already made plus proposed) exceed the aggregate of the paid up capital and free reserves. However, temporary loans obtained from the company's bankers in the ordinary course of business shall not be considered as borrowings.

In the given case, the aggregate of paid up capital and free reserves comes to ₹1,35,00,000 (75,00,000 + 50,00,000 + 10,00,000). Since the company has already borrowed ₹ 30,00,000 (it has been assumed that secured loans of ₹ 30,00,000 is not a temporary loan, i.e. it is not a loan obtained from the company's bankers in the ordinary course of business), the long term borrowings from financial institutions shall not exceed ₹ 1,05,00,000 without the consent of the members by way of a special resolution.

(b) As per section 181 of the Companies Act, 2013, without the prior consent of the members in general meeting, the Board shall not contribute to bonafide charitable and other funds exceeding 5% of average net profits during immediately preceding 3 financial years.

The average net profits during immediately preceding 3 financial years comes to ₹ 22,00,000, viz., 1/3rd of (₹ 12,50,000 + Rs. 19,00,000 + Rs. 34,50,000). 5% of ₹ 22,00,000 comes to ₹ 1,10,000. Therefore, the Board may make contributions to charitable funds upto ₹ 1,10,000 during the financial year 2015-16 without prior permission of the company in general meeting.

(iii)

(a) Duty of officers and employees to furnish documents and information [Section 207(1)]

Where a Registrar or inspector calls for the books of account and other books and papers under section 206, it shall be the duty of every director, officer or other employee of the company to -

(i) produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanations in such form as the Registrar or inspector may require; and
(ii) render all assistance to the Registrar or inspector in connection with such inspection.

(b) Power of Registrar or Inspector to make copies and place identification marks [Section 207(2)]

The Registrar or inspector, making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be, -

(i) make or cause to be made copies of books of account and other books and papers; or
(ii) place or cause to be placed any marks of identification in such books in token of the inspection having been made.

(c) Powers of civil court vested in the Registrar and Inspector [Section 207(3)]
The Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters:
(i) The discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry.
(ii) Summoning and enforcing the attendance of persons and examining them on oath.
(iii) Inspection of any books, registers and other documents of the company at any place.

Question 2(e)

(i) M, who was appointed as additional director at the Board meeting held on 31st May, 2014 continues to be in his office on the ground that the annual general meeting for the financial year 2013-14 was not held as required under the Act. Whether continuation of M in the office is valid? Will your answer be different if M was also appointed as managing director for a period of 5 years with effect from 1st June 2014 at the same Board meeting?

(ii) Can an insurer assume risk without receiving the premium, as per Insurance Act, 1938?

(iii) Trinity Bank Limited acquired a building from ABC College in discharging a term loan advanced. The building had been mortgaged as security with the bank and the college had failed to repay the loan. The bank proposes to retain the building with it and let out on commercial basis to shops.

[6+5+4 = 15]

Answer:

(i) As per section 161(1) of the Companies Act, 2013, an additional director holds office upto the date of next annual general meeting or the last day on which the annual general meeting should have been held, whichever is earlier. Thus, an additional director vacates his office on the last day on which the annual general meeting ought to have been held as per the provisions of section 96 of the Companies Act, 2013, and cannot continue in office thereafter on the ground that the meeting was not called or could not be held within the time prescribed under section 96.

A managing director must be a director of the company. Therefore, if a managing director ceases to be a director, he automatically ceases to be a managing director. Accordingly, where an additional director, who is also appointed as a managing director, vacates the office of the additional director at the annual general meeting, the office of the managing director also ceases simultaneously with the cessation of office of additional director. However, if the additional director is re-elected as a regular director at the annual general meeting (by complying with the provisions of section 160 of the Companies Act, 2013) and thereby he continues as a director, he shall continue as a managing director also for the period for which he has been appointed as a managing director.

Thus, in the given case -
- M would vacate the office of a director on the last day on which the annual general meeting ought to have been held as per section 96.
- Only a director can be appointed as a managing director. Since, M vacates the office of additional director, the office of managing director is also vacated, as he is not re-elected as a regular director at the annual general meeting. He shall vacate the office of managing director irrespective of the fact that his appointment as a managing director

was made for a period of 5 years.

(ii) As per section 64VB, no insurer shall assume any risk without receiving the premium in advance. The provisions of section 64 VB are explained below:

(a) No risk to be assumed unless premium received in prescribed manner [Section 64VB(1)]
No insurer shall assume any risk in respect of any insurance business unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(b) Date of assuming risk [Section 64VB(2)]
The risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

(c) Situation where premium is tendered by postal money order or cheque [Explanation to Section 64VB(2)]
Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(d) Refund to be made directly to the insured and not to the agent [Section 64VB(3)]
Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(e) Duty of agent to deposit the premium with the insurer within 24 hours [Section 64VB(4)]
Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within 24 hours of the collection excluding bank and postal holidays.

(iii) As per section 9, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding 7 years from the acquisition thereof or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be.

As per Proviso to Section 9, the Reserve Bank may in any particular case extend the aforesaid period of 7 years by such period not exceeding 5 years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

In the given case, Trinity Bank Limited proposes to retain the building for letting out on commercial basis to shops, and not for its own use. In view of the provisions of section 9, Trinity Bank Limited cannot retain the building permanently with it for the purpose of letting out on commercial basis to shops. It shall have to dispose of the Building within 7 years from the date of its acquisition.

However, the Reserve Bank may permit Trinity Bank Limited to hold the building for such extended period, not exceeding 5 years, as it may deem f it.

Question 3: Answer any two questions **[20 Marks]**

Question 3(a)

(i) "The concept of Memorandum of Understanding (MoU) has been designed to provide flexibility and autonomy to CPSEs such that it facilitates them in pursuing the objectives and purposes, for which the enterprises have been set up."In the light of the above statement, explain the concept of MoU in India.

(ii) Triple Bottom Line Approach of Corporate Social Responsibility (CSR).

[5+5 = 10]

Answer:

(i) The Memorandum of Understanding (MoU) System in India was introduced in the year 1986, after the recommendations of the Arjun Sengupta Committee Report (1984). Twenty six years after its inception, the MoU system has evolved and is being strengthened, through regular reviews, to become a management tool that helps in performance evaluation as well as performance enhancement of CPSEs in the country.

The concept of Memorandum of Understanding (MoU) has been designed to provide flexibility and autonomy to Central Public Sector Enterprises (CPSEs) such that it facilitates them in pursuing the objectives and purposes, for which the enterprises have been set up.

Accountability has to be understood in a wider sense by associating it with answerability for the performance of the tasks and the achievement of targets negotiated mutually between the Government and the CPSE. The rationale for MoU could be derived from principal/agent theory. The principal (administrative ministry on behalf of real owners - the people) can only observe outcomes and cannot measure accurately the efforts expended by the agent (CPSE managers). Also the Principal can only, to a limited extent, distinguish the effects of influences from other factors, which affect the performance. Therefore extensive intervention by administrators, who might not be too knowledgeable about the nature of problems confronting the enterprises, not only impacts productivity and profitability but also makes it impossible to fix accountability for non-achievement of targets.

A negotiated incentive contract (MoU), hence, is viewed as a device to reveal information and motivate managers to exert effort. Notwithstanding the spectacular performance of CPSEs in several areas, there has been a sense of disillusionment with some aspects of CPSE performance such as low profitability and lack of competitiveness. The extensive regulation of CPSEs by government had stifled the initiative and growth of public sector. The Economic Administration Reforms Commission (Chairman: L. K. Jha) had dwelt on issue of autonomy and accountability. The Commission had recommended a careful re-consideration of extant concepts and instrumentalities relating to the accountability of public enterprises with a view to ensuring (a) that they do not erode the autonomy of public enterprises and thus hampers the very objectives and purposes for which these enterprises have been set up and given corporate shape and for which they are to be accountable; and (b) accountability has to be secured in the wider sense of answerability for the performance of tasks and achievements of results. The adoption of MoU system in India could be seen as an attempt to operationalize this very vital recommendation.

In the backdrop of the dynamic external environment, "world - wide competition" and globalization, it is critical that the MoU system is strengthened such that it facilitates the CPSEs in becoming economically viable through efficient management and control. Hence, the MoU system aims at offering autonomy to CPSEs and is designed such that it can aid in the

assessment of the extent to which mutually agreed objectives (Mandal, 2012) are achieved. This section of the report traces the evolution of the MoU system through various committee reports and highlights the major observations, along with the actions taken thereafter. This would act as an indicator of the developments that have happened in the MoU system in India and, through the study of extant literature, would also highlight the areas of concern raised after each study.

The various committees formed over the years are:
1. Arjun Sengupta Committee Report (1984)
2. National Council of Applied Economic Research (2004)
3. Report of the Working Group (2008)
4. S.K. Roongta Committee Report (2011)
5. Mankad Committee and Task Force (2012)

(ii) Within the broader concept of corporate social responsibility, the concept of Triple Bottom Line (TBL) is gaining significance and becoming popular amongst corporate. Coined in 1997 by John Ellington, noted management consultant, the concept of TBL is based on the premise that business entities have more to do than make just profits for the owners of the capital, only bottom line people understand. "People, Planet and Profit" is used to succinctly describe the TBL. "People" (Human Capital) pertains to fair and beneficial business practices toward labour and the community and region in which a corporations conducts its business. "Planet" (Natural Capital) refers to sustainable environmental practices. It is the lasting economic impact the organization has on its economic environment A TBL company endeavors to benefits the natural order as much as possible or at the least does no harm and curtails environmental impact. "Profit" is the bottom line shared by all commerce. The people issues faced by the organization includes -

i) Health
ii) Safety
iii) Diversity
iv) Ethnicity
v) Education and literacy
vi) Prevention of child labour
vii) Differently – abled

The planet concerns include

i) Climate change
ii) Energy
iii) Water
iv) Air pollution
v) Waste management
vi) Ozone layer depletion, etc.

The need to apply the concept of TBL is caused due to –

i) Increased consumer sensitivity to corporate social behavior
ii) Growing demands for transparency from shareholders/stakeholders
iii) Increase environmental regulation
iv) Legal costs of compliances and defaults
v) Concerns over global warming
vi) Increased social awareness
vii) Awareness about and willingness for respecting human rights
viii) Media's attention to social issues
ix) Growing corporate participation in social upliftment

While profitability is a pure economic bottom line, social and environmental bottom lines are semi or non - economic in nature so far as revenue generation is concerned but it has

certainly a positive impact on long term value that an enterprise commands.

But discharge of social responsibilities by corporate is a subjected matter as it cannot be measured with reasonable accuracy.

Question 3(b)

(i) State the factors influencing Corporate Social Responsibility (CSR).

(ii) Would you advocate the following understandings with relation to CSR? Discuss.

- **Businesses invest the money, therefore they decide the modus operandi of the CSR initiative**
- **Financial resources alone can meet CSR needs of an enterprise.**
- **CSR is interchangeable with corporate sponsorship, donation or other philanthropic activities.**

[5+5 = 10]

Answer:

(i) Many factors and influences, including the following, have led to increasing attention being devoted to CSR:

1. Globalization – coupled with focus on cross-border trade, multinational enterprises and global supply chains –is increasingly raising CSR concerns related to human resources management practices, environmental protection, and health and safety, among other things.
2. Governments and intergovernmental bodies, such as the United Nations, The OECD and the ILO have developed compacts, declarations, guidelines, principles and other instruments that outline social norms for acceptable conduct.
3. Advances in communications technology, such as the Internet, Cellular phones and personal digital assistants, are making it easier to track corporate activities and disseminate information about them. Non-governmental organizations now regularly draw attention through their websites to business practices they view as problematic.
4. Consumers and investors are showing increasing interest in supporting responsible business practices and a demanding more information on how companies are addressing risks and opportunities related to social and environmental issues.
5. Numerous serious and high-profile breaches of corporate ethics have contributed to elevated public mistrust of corporations and highlighted the need for improved corporate governance, transparency, accountability, and ethical standards.
6. Citizens in many countries are making it clear that corporations should meet standards of social and environmental care, no matter where they operate.
7. There is increasing awareness of the limits of government legislative and regulatory initiatives to effectively capture all the issues that CSR addresses.
8. Businesses are recognizing that adopting an effective approach to CSR can reduce risk of business disruptions, open up new opportunities, and enhance brand and company reputation.

(ii) In the absence of a universally accepted definition for CSR, there are some myths that surround the concept, and the ones stated are a few of the same. They should be dealt as follows.

Myth # 1: Businesses invest the money; therefore they decide the modus operandi of the CSR initiative

There is a notion that since businesses invest money in society, they are the one who will be deciding upon the modus operandi of the CSR initiative. However this is not true. CSR driven by the mandate of an enterprise alone may not generate desired results. Stakeholders must be involved from the onset in defining an initiative to make it successful. Corporates must not assume that they understand the needs of a community by taking them at face value; stakeholder's needs must be considered within the local context and culture.

Myth # 2: Financial resources alone can meet CSR needs of an enterprise.

In fact, financial resources are only part of the equation. Besides financial resources, it is equally or even more important for the CSR programmes to be well defined and well accompanied by adequate human resources if they are to meet the intended objectives.

Myth # 3: CSR is interchangeable with corporate sponsorship, donation or other philanthropic activities.

The focus of responsible business practices in the profit sector is hitherto largely confined to community charity-based projects.

While this may have been relevant for the historical context in the mid-90s when Carroll's definition was coined, the current thinking of CSR has moved beyond philanthropy to in fact en-compass all internal and external segments of business operations: employees, market environment and community.

The rationale for CSR has been articulated in a number of ways. In essence, it is about building sustainable businesses, which need healthy economies, markets and communities.

Question 3(c)

(i) Explain the importance of 'Ethics' for a finance and accounting professional.

(ii) If you are an accounting professional in a large multinational corporation, what steps would you undertake to create an ethical accounting environment? [5+5 = 10]

Answer:

(i) The importance of 'Ethics' for a finance and accounting professional may be discussed as two-fold:

1. Public Responsibility:

Finance and Accounts is perhaps the only business function which accepts responsibility to act in public interest. Finance and accounting professional's responsibility is not restricted to satisfy the needs of any particular individual or organization. While acting in public interest, it becomes imperative that the finance and accounting professional adheres to certain basic ethics in order to achieve his objectives.

2. To restore Public Confidence:

Various accounting scandals witnessed during the past few years have put a serious question mark on the role of the finance and accounting professional in providing the right information for decision making both within and outside their respective organizations.

As these finance and accounting professionals are in public practice, they should take reasonable steps to identify circumstances that could pose the conflict of interest and thus leading to follow unethical behavior.

(ii) The factors that are to be considered for creating an ethical accounting environment are:

1. **Employee Awareness:**
   - Make the employees aware of their legal and ethical responsibilities.
   - Train and motivate employees towards ethical behaviour.
   - Encourage employees to report cases of violations, frauds, manipulations, misappropriations, etc.

2. **Reporting of Frauds:** For reporting violations, manipulations, misappropriations, etc., -
   - without any fear of being reprimanded or fired,
   - provide facilities to employees.

3. **Whistle Blowers:**
   - A whistle blower is an employee /person who reports frauds, mismanagement or creating good accounting environment in a business enterprise. Fair treatment and appreciation of Whistle Blowers is necessary to check fraud.