

**PAPER 13 – Corporate Laws and Compliance**

**SECTION A**

[Answer to Q.No.1 is compulsory and attempt any 4 from the rest]

1. (a) Star Ltd. is authorized by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. A shareholder deposits in advance the remaining amount due on his shares without any calls made.

Referring to the provisions of the Companies Act, 1956, state the rights and liabilities of the shareholder, which will arise on the payment of calls made in advance. [3]

(b) Bridge Ltd. Is an infrastructure company with paid up capital and free reserve of ₹ three crores and one and half crores respectively. The Board of directors granted a loan of ₹ 1 crores to Satyam Ltd and also gave a guarantee to IFCI for giving a loan of ₹ 1.50 crores to Nelson Ltd. Bridge Ltd. has not given any other loan or guarantee to anyone. A group of shareholders of Bridge Ltd. objected to the above deals on the ground that they are violative of the provisions of the Companies Act, 1956. Applying the provisions of the said enactment relating to inter-corporate loans and investments in the given case, decide:

- (i) Whether the objection raised by the shareholders is tenable?  
(ii) Would your answer be the same in case the amount of loan granted is ₹ 1.50 crores and the guarantee given is for an amount of ₹ 2 crores?  
(iii) What would be your answer in case Bridge Ltd. is a private company not being the subsidiary of any public limited company? [2+1+1=4]

(c) In the context of Court rulings in the matter of merger, answer the following :

- (i) Whether exchange ratio approved by shareholders of merging companies can be questioned by a small group of dissenting shareholders?  
(ii) Whether transferor company is justified in excluding assets held on lease and license arrangement, from those transferred to the transferee company? [2+2=4]

(d) The Board of Directors of a public limited company borrowed in excess of the limits as laid down by the Companies Act, 1956. The money was utilized for genuine purposes in the interests of the company. Can the company repudiate the liability being ultra vires the director ? [4]

**Answer 1.**

- (a) The following rights and obligations will arise on the payments of calls made in advance :
- ✓ No voting right shall be available in respect of such call in advance until such call become presently payable.
  - ✓ The shareholder becomes an unsecured creditors in respect of amount so paid by him.
  - ✓ Interest on such amount can be paid only if it is authorized by Articles and that also at a rate so mentioned therein.
  - ✓ Liability due from the shareholder in respect of any future call shall come to an end.
  - ✓ Member who has paid such call is entitled to recover the amount in event of winding up prior to repayment of capital by company.
  - ✓ The member upon all or in part of the moneys so advanced, may receive interest at such rate not exceeding, unless the company in general meeting shall otherwise

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direct, 6% p.a., as may be agreed upon between the Board and the member paying the sum in advance.

- (b) Intercorporate loans and investments are governed by the provisions of Section 372A. As per section 372A(8), the provisions of section 372A do not apply to a company established with the object of providing infrastructural facilities.

The answer to the given problem is given as under :

- (i) The company Bridge Ltd. is an infrastructure company. The provisions of section 372A do not apply to an infrastructure company. Accordingly, the provisions of section 372A are not required to be complied with by Bridge Ltd. Therefore, the objection raised by the shareholders that the company has violated the provisions of section 372A, is not tenable.
- (ii) The answer shall remain the same even if the amount of loan granted is Rs. 1.50 crores and guarantee given is Rs. 2 crores, since the provisions of section 372A are not attracted at all to Bridge Ltd.
- (iii) In case Bridge Ltd. were a private company, then also there would be no contravention of section 372A since section 372A does not apply to a private company.

- (c) i) No; **Hindustan Lever Employees' Union v. Hindustan Lever Ltd. [1994] 4 Comp. LJ 228 (Bom.)**, the Bombay High Court held that where the exchange ratio has been approved by an overwhelming majority of shareholders and there is no basis to doubt their judgment and the valuation having been also confirmed to be fair by the firm of auditors, the objections of the same cannot be sustained.

ii) Yes; the Supreme Court in **Hindustan Lever Employees' Union v. Hindustan Lever Ltd. [1995] 83 Comp. Cas. 30** held that the leasehold assets and properties held by a company were neither transferable nor heritable; they are in the nature of a personal privilege. Accordingly, the transferor – company was justified in excluding them.

- (d) Section 293(1)(d) restricts the power of the Board of Directors to borrow money upto the aggregate of paid-up capital of the company and its free reserves. Where this limit is exceeded, the consent of the general meeting is required. As per section 293(5), if such limit is exceeded but the consent of the general meeting is not obtained, then no debt incurred by the company in excess of this limit shall be valid or effectual, unless the lender proves that

- (i) He advanced the loan in good faith; and
- (ii) He did not have any knowledge that such limit had been exceeded.

If the borrowing by the directors is ultra vires their power, the directors may be personally liable in damages to the lender, on the ground of breach of warranty of authority. Where the borrowing is unauthorized, the company will be liable to repay. If it is shown that the money had gone in the hands of the company [**Lakshmi Ratan Cotton Mills Co Ltd. V J.K. Jute Mills Co. Ltd (1957) 27 Comp Cas 660, AIR 1957 All 311**].

In the present case, the money has been used by the company for genuine business purposes. Thus, the company cannot repudiate its liability to repay the money.

2. (a) **XYZ Ltd., over years, enjoys high reputation and its General Reserve is many times more than the paid up capital of the Company. There is apprehension of cornering the shares of**

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the company by some persons likely to result in change in the Board of Directors which may be prejudicial to the public interest.

Advise, as to how can XYZ Ltd. block the transfer of shares of the company under the provisions of the Companies Act, 1956. [8]

(b) In the general meeting of X Ltd., held on 02.05.2013, Mr. Adi was appointed as a director. On that day, he was not holding any equity shares in X Ltd. As per the articles of association of X Ltd., the share qualification is the holding of 500 equity shares. On 15.06.2013 Mr. Adi applied for 1,000 equity shares in X Ltd. and the shares were allotted on 10.07.2013. Mr. Adi claims that he was holding the qualification shares within the time specified in Companies Act. Discuss the validity of the arguments of the director. [4]

(c) The auditor of the ACB Company resigned his office on 31<sup>st</sup> Nov. 2011, while the financial year of the company ends on the 31<sup>st</sup> March 2012. Explain how the auditor will be appointed? [3]

### Answer 2.

(a) Section 250 confers wide powers on the Company Law Board to prevent any change in the Board of Directors of a company if it is of the opinion that such change is prejudicial to public interest. Broadly, section 250 seeks to prevent an undesirable takeover. The Company Law Board is empowered to exercise its powers in the following two cases :

- I. Where the transfer of shares has already taken place
  - (i) At whose instance can Company Law Board act ? – The Company Law Board has the power to impose restrictions suo moto. No reference by the Central Government or complaint by any other person is required.
  - (ii) Conditions – The Company Law Board has the power to impose certain restrictions if it is satisfied that –
    - ✓ A transfer of shares in a company has taken place
    - ✓ As a result of such transfer of shares, a change in the composition of the Board of Directors is likely to take place; and
    - ✓ Any such change in the composition of Board would be prejudicial to the public interest.
  - (iii) Nature of restrictions – The Company Law Board may direct that –
    - ✓ The voting rights in respect of those shares shall not be exercisable for the specified period not exceeding 3 years;
    - ✓ No resolution passed or action taken to effect a change in the composition of the Board of directors before the date of the order shall have effect unless confirmed by the Company Law Board.
  - (iv) Variation of order – The Company Law Board may, at any time, vary or rescind any order made by it. An intimation shall be served on the company about the variation of the order within 14 days.
- II. Where transfer of shares is likely to take place
  - (i) At whose instance can Company Law Board act ? – The Company Law Board has the power to impose restrictions suo moto. No reference by the Central Government or complaint by any other person is required.
  - (ii) Conditions – The Company Law Board has the power to impose certain restrictions if –
    - ✓ It has reasonable ground to believe that a transfer of shares in a company is likely to take place;
    - ✓ As a result of such transfer of shares, a change in the composition of Board would be prejudicial to the public interest.

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- (iii) Nature of restrictions – The Company Law Board may direct that any transfer of shares in the company during such period not exceeding 3 years as may be specified in the order, shall be void.
- (iv) Variation of order – The Company Law Board may, at any time, vary or rescind any order made by it. An intimation shall be served on the company about the variation of the order within 14 days.

- (b) There is no statutory requirement that a director must hold qualification shares. Share qualification is to be obtained by a director only if the articles of the company so require. A director shall obtain share qualification within 2 months of appointment. Nominal amount of qualification shares shall not exceed ₹5,000 or nominal value of one share, where it exceeds ₹5,000 (Section 270). The office of a director shall become vacant where he fails to acquire the qualification shares within 2 months of appointment (Section 283).

A person cannot be said to be qualified in respect of qualification shares until he is registered as holder of the shares [**Channel Collieries Trust Ltd. v Dover St. Margarets and Martin Mill Light Rly. Co. (1914) 2 Ch 506; Ram Autar Jalan v Coal Products of India Ltd. (1970) 40 Comp Cas 715 (SC)**].

Accordingly, where the Board of directors approves the transfer of shares in the name of a director but the shares are not registered in the name of the director within 2 months from the date of his appointment, he cannot be said to have acquired the qualification shares in the prescribed time.

In the given case, Mr. Adi was appointed as a director on 02.05.2013 and therefore he must obtain the qualification shares on or before 02.07.2013. Mr. Adi applied for shares on 15.06.2013, but was registered as a shareholder only on 10.07.2013. As on 02.07.2013, he cannot be said to be a holder of qualification shares. As per section 283, the office of a director shall become vacant where he fails to acquire the qualification shares within 2 months of appointment. Accordingly, the argument of Mr. Adi is not correct and he shall vacate the office of the director on 03.07.2013.

- (c) A vacancy in the office of auditor, for any reason otherwise than retirement on expiry of term, is referred as Casual Vacancy, if a casual vacancy arises in the office of auditor due to death, insanity, disqualification or insolvency, etc., but not by resignation, section 224(6) empowers the Board of directors to fill the same. Till the vacancy so caused, is filled, the remaining auditor or auditors, if any, may act.

Where a casual vacancy results on account of resignation, the vacancy can be filled only in the general meeting. The auditor appointed in a casual vacancy shall hold office until conclusion of the next annual general meeting held after their appointment.

3. (a) **Shri Basu was appointed as a Member of the CCI by Central Government. He has a professional experience in international business for a period of 11 years, which is not a proper qualification for appointment of a person as Member. Pointing out this defect in the constitution of CCI, Mr. Sen, against whom CCI gave a decision, wants to invalidate the proceedings of CCI. Examine whether Mr. Send will succeed. [3]**

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(b) X Co. Ltd., a closely held company comprised of two groups of shareholders – one foreign and the other Indian. The foreign group holds 60% and the Indian 40% of the shares of the company. As per Articles of Association of the company both groups had equal managerial powers. The relationship between the two groups soured and the operations of the company reached a deadlock. The Indian group, therefore, approached the Company Law Board for action against the foreign group for oppression. Referring to the provisions of the Companies Act, 1956 and/or the decided case laws, discuss -

(i) Whether the contention of oppression against the foreign group by the India group is tenable?

(ii) What are the powers of the Company Law Board in this regard? [2+3=5]

(c) Wealth Bank of India, a Nationalised Bank, acquired a building from Mr. Shyam on 1<sup>st</sup> Dec, 2008 in discharging a term loan advanced to him, who had mortgaged the said building as security and failed to repay the loan. The building was given on rent to various companies by Mr. Shyam. Now, the bank wants to keep the building as it is and earn the rent. With the reference to the provisions of the Banking Regulation Act, 1949, state, whether the bank can do so. [4]

(d) The Smart Traders Association was maintained by a joint Hindu Family consisting of 21 major and 4 minor members. The Association is carrying the business for earning profits and they were not registered as a Company under the Companies Act, 1956 or other law. State whether Smart Traders Association is having any legal status? Will there be any change in the status of the Association if the members of the Smart Traders Association subsequently reduced to 15? Support your answer with the correct provision of law. [3]

### Answer 3.

(a) As per section 15 of the Competition Act, 2002, no act or proceeding of the CCI shall be invalid merely by reason of

- (i) Any vacancy in the CCI, or
- (ii) Any defect in the constitution of the CCI, or
- (iii) Any defect in the appointment of a person acting as a Chairperson or as a Member, or
- (iv) Any irregularity in the procedure of the CCI not affecting the merits of the case.

In the given case, Mr. Basu should have got atleast 15 years experience in the field of international business. However, the defect in the appointment of Shri Basu acting as a Member, shall not invalidate the proceedings of CCI. Hence, Mr., Sen will not be able to succeed in his claim.

(b) An application seeking relief from the Company Law Board must make out a prima facie case that the degree of oppression is so severe that there is just and equitable ground for winding up of the company. The answer to the given problem is as follows :

- (i) Both the India group and foreign groups are equally strong, and one is unable to oppress the other. As such, there may be a deadlock, but not oppression. It is not a case for winding up of the company and so relief under section 397 is not available [Gnanasambandam (CP) v Tamiland Transports (Coimbatore) Pvt. Ltd. (1971) 41 Comp Cas 26]. Thus, the contention of the Indian group that the foreign group is acting in a manner oppressive to the Indian group is not tenable.
- (ii) The powers of the Company Law Board under section 397 are discretionary in character. Company Law Board may order the foreign group to buy out the minority group shareholding at the fair price with necessary permission as was held in

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**Yashovardhan Saboo v Groz Beckert Saboo Ltd. (1993) 1 Comp LJ 20.** However, where there was deadlock in the management of private limited company and both the parties failed to buy the other group, the company was wound up under just and equitable clause [**Kishan Lal Ahuja v Surech Kumar Ahuja**]. Thus, in the given case, if both the groups fail to exercise the option to buy the other group, Company Law Board may order the company to be wound up.

- (c) 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, Wealth Bank proposes to keep the building for earning rent from tenants, and not for its own use. In view of the provisions of section 9, Wealth Bank of India cannot keep the building permanently with it for the purpose of earning rent from tenants. It shall have to dispose of the building within 7 years from the date of its acquisitions, i.e., on or before 31<sup>st</sup> December 2015.

However, if the approval of the Reserve Bank is obtained, it may continue to hold the building till such extended period as is sanctioned by the Reserve Bank. The Reserve Bank shall not permit the Wealth Bank to hold the property beyond 31<sup>st</sup> December, 2020.

- (d) As per Section 11 of the Companies Act, 1956, no company, association or partnership consisting of more than 10 persons for the purpose of carrying on Banking Business and more than 20 persons for carrying on any other business, can be formed unless it is registered under the Companies Act or is formed in pursuance of some other Indian Law.

As an exception to the above mentioned provision a Joint Hindu Family carrying on any business, for earning profits with any number of Members without being registered or formed in pursuance of any Indian Law, will not be an illegal association.

In the given case, section 11 will not apply and even if the association is not registered under the Companies Act, 1956, will be considered as a legal association. There will be no change in legal status in case of subsequently reduction in the number of members.

4. (a) **Tintin Ltd. issued convertible debentures during the financial year 2011-12 wants to alter the terms of redemption. Is it permissible under the provision of SEBI (Securities and Exchange Board of India) regulations?** [2]

(b) **The object clause of the Memorandum of a company empowers it to carry on distillery business and any other business that is allied to it. The company wants to alter its Memorandum so as to include the cinema business in its objects clause. Advise the company.** [4]

(c) **Section 14(2) of the Insurance Regulatory and Development Authority Act, 1999 specifies the powers and functions of the Insurance Regulatory and Development Authority. List out those powers and functions of the Authority.** [7]

(d) **At an Annual General Meeting held on 20.09.2012, an auditor was appointed to hold office up to the conclusion of next Annual General Meeting. The next Annual General**

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**Meeting was convened on 15.09.2013 but stood adjourned without transacting any business. Does the retiring auditor continue in office? [2]**

### Answer 4.

**(a)** No issuer shall alter the terms (including the terms of issue) of Specified Securities which may adversely affect the interest of the holders of that specified securities. However alteration permissible if —

- Written consent is obtained from the Holders of not less than 3/4<sup>th</sup> of the Specified Securities of that class, or
- With the sanction of a Special resolution passed at a meeting of the Holders of the Specified Securities of that class.

**(b)** Section 17(1) of the Companies Act, 1956 permits alteration of Memorandum to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company. Thus, section 17(1) does not prohibit a company to diversify in areas other than those specified in the Memorandum. But the business sought to be added must be such which can conveniently or advantageously be combined with the business of the company.

The Punjab high Court in Punjab Distilling Industries Ltd. v. Registrar of Companies, [1963] 33 Comp. Cas. 811 [where an alteration to the Memorandum of Association to carry on a new business was not confirmed because it had nothing to do even remotely with the existing business and it could not be said that the new business would be conducive to and economical or efficient in doing the existing business] held that the cinema business could not be either conveniently or advantageously combined with the distillery business, and therefore change of objects. Accordingly, alteration shall not be allowed.

**(c)** The powers and functions of the Insurance Regulatory and Development Authority shall include,—

- (i) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;
- (ii) protection of the interests of the policy-holders in matters concerning assigning of policy, nomination by policy-holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;
- (iii) specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;
- (iv) specifying the code of conduct for surveyors and loss assessors;
- (v) promoting efficiency in the conduct of insurance business;
- (vi) levying fees and other charges for carrying out the purposes of this Act;
- (vii) calling for information from, undertaking inspection of, conducting inquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organisations connected with the insurance business;
- (viii) specifying the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;
- (ix) regulating investment of funds by insurance companies;
- (x) regulating maintenance of margin of solvency;
- (xi) adjudication of disputes between insurers and intermediaries of insurance intermediaries;

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- (xii) supervising the functioning of the Tariff Advisory Committee
- (xiii) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and
- (xiv) exercising such other powers as may be prescribed.

**(d)** According to section 224(1) of the Companies Act, 1956, an auditor appointed at an Annual General Meeting holds office from the conclusion of that Annual General Meeting to the conclusion of the next Annual General Meeting. In the given case, the auditor was to hold office up to the conclusion of the Annual General Meeting duly convened but which stood adjourned. As the adjourned meeting is merely a continuation of the original meeting, the Annual General Meeting remains uncompleted and the retiring auditor continues to hold the office till the conclusion of the meeting.

**5. (a) State whether there is any restriction under the Foreign Exchange Management Act, 1999 in respect of drawal of foreign exchange for payments due on account of amortization of loans in the ordinary course of business. [2]**

**(b) Pigmi Ltd. Co. issued and published its prospectus to invite the investors to purchase its shares. The said prospectus contained false statement. Mr. A purchased some partly paid shares of the company in good faith on the Stock Exchange. Subsequently, the company was wound up and the name of Mr. A was in the list of contributors. Decide:**

**(i) Whether Mr. A is liable to pay the unpaid amount?**

**(ii) Can Mr. A sue the directors of the company to recover damages? [3]**

**(c) M/s Naira Infotech Ltd. was incorporated on 01.04.2012. No General Meeting of the company has been held so far. Explain the provisions of the Companies Act, 1956 regarding the time limit for holding the first Annual General Meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting. [4]**

**(d) Mr. Lal has been arrested for a cognizable and non bailable offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. Advise, as to how can he be released on bail in this case? [3]**

**(e) A public limited company has only seven shareholders, all the shares being paid-up in full. All the shares of one such shareholder are sold by the Court in an auction and purchased by another shareholder. The company continues to carry on its business, thereafter. Discuss the liabilities of the shareholders of the company. [3]**

### **Answer 5.**

**(a)** As per section 6 of the Foreign Exchange Management Act, 1999, the Reserve Bank of India (RBI) shall not impose any restriction on the drawal of foreign exchange for — (i) payments due on account of amortisation of loans, or (ii) for depreciation of direct investments in the ordinary course of business. Hence the transaction is permissible under the Foreign Exchange Management Act.

**(b)** (i) Yes, Mr. A is liable to pay the unpaid amount on the shares. As Mr. A has purchased partly paid shares, so he is liable for the remaining part of the shares. At the time of winding up he is liable to contribute as a contributory.



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(ii) No, Mr. A cannot sue the directors to recover damages for the misstatement. The shareholder must have relied on the statement in the prospectus in applying for shares.

In the present case, Mr. A purchased shares in good faith on the stock exchange. He had not relied on the statement in prospectus. So he cannot sue.

**(c)** According to Section 166 of the Companies Act, 1956, every company shall hold its first Annual General Meeting within a period of 18 months from the date of incorporation.

In given case, Naira Infotech Ltd. was incorporated on 01.04.2012, the first annual general meeting of the company should be held on or before 30.09.2013.

Even though the Registrar of Companies is empowered to grant extension of time for a period not exceeding 3 months for holding the Annual General Meeting, such a power is not available to the Registrar in the case of the first Annual General Meeting.

Consequently, company and its directors will be liable for the default if the Annual General Meeting was held after 30.09.2013.

**(d)** A person accused of an offence punishable for a term of imprisonment of more than three years under the Part A of the Schedule to the Prevention of Money Laundering Act shall not be released on bail or on his own bond unless —

- (i) The public prosecutor has been given an opportunity to oppose the application for such release, and
- (ii) Where the public prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that —
  - He is not guilty of such offence, and
  - He is not likely to commit any offence while on bail.

However the following persons may be released on bail, if the Special Court so directs —

- (i) Person who is under 16 years of age, or
- (ii) A woman, or
- (iii) Person who is sick or infirm.

**(e)** The problem in question relates to reduction of membership below the statutory minimum. Section 12 of the Companies Act, 1956 requires a public company to have a minimum of seven members. If at any time the membership of a public company falls below seven and it continues its business for more than six months, then according to section 45 of the Companies Act, 1956 every such member who was aware of this fact, would be individually (personally) liable for all debts contracted after six months.

Thus, in the above problem, the remaining six members shall incur personal liability for the debts contracted by the company:

- (i) If they continued to carry on the business of the company with that reduced membership (i.e., 6) beyond six months period;
- (ii) Only those members who knew of this fact of reduced membership shall be liable. For instance, one of the members who were abroad and thus not aware of those facts, shall not be liable.
- (iii) The liability shall extend only to the debts contracted after six months from the date of auction of that member's shares.

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6. (a) 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 name of the Company is to be "PQR Iron & 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. [2]

(b) M/s. Alian Limited was wound up with effect from 15.04.2013 by an order of the Court. Mr. X, who ceased to be a member of the company from 01.07.2012, has received a notice from the liquidator that he should deposit a sum of ₹ 5,000 as his contribution towards the liability on the shares previously held by him. In this context explain whether Mr. X can be called a contributory and whether he can be made liable and whether there is any limitation on his liability. [4]

(c) The working of Mega Stock Exchange Association Ltd. is not being carried on by its Governing Board in public interest. On receipt of representations from various Investors and investors' Association, the Central Government is thinking to withdraw the recognition granted to the said Stock Exchange. You are required to state the circumstances and procedure for withdrawal of such recognition as per the provisions of Securities Contracts (Regulation) Act, 1956 in this regard. [5]

(d) On scrutiny of the sole selling agency agreement of ABC Company Ltd., with P, the Central Government finds that the agreement is prejudicial to the interests of the company and cancels it. P consults you as to the advisability of challenging the order of the Central Government. Please advise P as to the chances of his successfully challenging the order of the Central Government. [4]

### Answer 6:

- (a) As per section 7(1) of the Banking Regulation Act, 1949, 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 ' PQR Iron & Steel Bank Limited' is not permissible.

- (b) The term 'contributory' means every person liable to contribute to the assets of a company in the event of its being wound up. The liability of a past member is secondary and arises only when it appears to the Court that the present members are unable to satisfy the contributions required to be made by them.

In the present case, Mr. X ceased to be a member of the company from 01.07.2012 and the winding up commences on 15.04.2013. As on the date of commencement of winding up, one year has not elapsed since he ceased to be a member, and therefore he shall be treated as a past member. However, Mr. X shall not be liable to contribute —

- (i) in respect of any debt or liability of the company contracted after he ceased to be a member;

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- (ii) unless it appears to the Court that the present members are unable to satisfy the contributions required to be made by them;
- (iii) anything more than the amount remaining unpaid on the shares held by him, i.e., if his shares are fully paid, he shall incur no liability.

**(c)** Section 5 of the Securities Contracts (Regulation) Act, 1956 empowers the Central Government to withdraw the recognition granted to a stock exchange. The procedure for withdrawal of recognition is as follows:

- (i) If, considering the interest of the trade or the public interest, the Central Government is of the opinion that the recognition granted to a stock exchange should be withdrawn, it shall serve a written notice on the governing body of the stock exchange.
- (ii) The notice shall specify the reasons for the proposed withdrawal of recognition.
- (iii) The Central Government shall give an opportunity of being heard to the governing body of the stock exchange.
- (iv) If the Central Government is satisfied that the recognition should be withdrawn, it may, by notification in the Official Gazette, withdraw the recognition granted to the stock exchange.
- (v) No withdrawal of recognition shall affect the validity of any contract entered into or made before the date of the notification. In respect of any contract which is outstanding as on the date of notification, the Central Government may, after consultation with the stock exchange, make such provision as it deemed fit.

**(d)** Section 294(5) of the Companies Act, 1956 empowers the Central Government to enquire into the terms and conditions of the appointment of a sole selling agent. It can make variations in the terms and conditions if it is satisfied that these are prejudicial to the interest of the company.

The proceeding undertaken by the Central Government must be guided by the principles of natural justice. The Central Government must give the sole selling agent an opportunity of being heard before making any order prejudicial to him.

Section 294 does not authorise the Central Government to cancel the appointment of a sole selling agent.

In the given case, P is advised to challenge the order of the Central Government on the following grounds:

- (i) No opportunity of being heard was given to P. Since, the order of the Central Government violates the principles of natural justice, it is void.
- (ii) The order does not merely vary the terms but cancels the entire agreement. Since, the Central Government has no power to cancel a sole selling agency, the action of the Central Government is ultra-vires the Companies Act and is void.

### **SECTION B**

**[Answer any five questions from Q.No.7 (a) to (f)]**

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7. (a) State the benefits of Corporate Social Responsibility (CSR). [5]
- (b) Define Corporate Governance. Write the core objectives of Corporate Governance. [5]
- (c) Describe the core elements which should be covered by Corporate Social Responsibility (CSR) as per the Corporate Social Responsibility Voluntary Guidelines, 2009. [5]
- (d) List the steps which must be applied to every aspects of the Whole Life-cycle Costing (WLCC). [5]
- (e) Clarify the following statements: [5]
- (i) Codification of Corporate Governance in India started with the recommendations of Kumar Mangalam Birla Committee.
  - (ii) Corporate Social Responsibility is distinct from corporate philanthropy.
- (f) Describe the factors responsible for increasing attention towards Corporate Social Responsibility by the Corporates. [5]

### Answer 7(a):

#### The benefits of Corporate Social Responsibility (CSR):

1. The Law of Responsibility: Society gives business its license to exist and this can be amended or revoked at any time if it fails to live up to expectations.
2. Enhanced Brand Image and Reputation: Customers are drawn to brands and companies with good reputations.
3. Checks Government regulation/ Controls: Regulation and control are costly to business, both in terms of energy and money. Any failure of businessmen to assume social responsibilities invites government to intervene and regulate or control their activities.
4. Reduced Operating Costs: Some CSR initiatives can reduce operating costs dramatically. For example, many recycling initiatives cut waste-disposal costs and generate income by selling recycled materials.
5. Improved Financial Performance: Companies which are socially responsible carry a good image in eyes of customers as well as business arena which ultimately end up in improving the financial performance of companies.

### Answer 7(b):

**Corporate Governance:** There is no single, accepted definition of Corporate Governance. There are substantial differences in definition according to which country we are considering. Corporate governance is about promoting corporate fairness, transparency and Accountability. The term governance relates to a process of decision making and implementing the decisions in the interest of all stakeholders. It basically relates to enhancement of corporate performance and ensures proper accountability for management in the interest of all stakeholders.

#### The core objectives of Corporate Governance:

1. Transparency — According to this objective, every step shall be taken to ensure that timely and accurate information is imparted to all concerned.
2. Participation — Steps shall be taken to provide adequate information to shareholders and to

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ensure their participation in policy matters.

3. Legal Adherence — All legal policies and rules shall be duly complied.
4. Effectiveness — Entire management shall contribute and try to use fairness and honesty with stakeholders so that Effective governance can be attained.

### **Answer 7(c):**

Each business entity should formulate a Corporate Social Responsibility (CSR) policy to guide its strategic planning and provide a roadmap for its CSR initiatives, which should be an integral part of overall business policy and aligned with its business goals. The policy should be framed with the participation of various level executives and should be approved by the Board.

### **The CSR Policy should normally cover following core elements:**

1. Care for all Stakeholders: The companies should respect the interests of, and be responsive towards all stakeholders, including shareholders, employees, customers, suppliers, project affected people, society at large etc. and create value for all of them. They should develop mechanism to actively engage with all stakeholders, inform them of inherent risks and mitigate them where they occur.
2. Ethical functioning: The governance systems of companies should be underpinned by Ethics, Transparency and Accountability. They should not engage in business practices that are abusive, unfair, corrupt or anti-competitive.
3. Respect for Workers' Rights and Welfare: Companies should provide a workplace environment that is safe, hygienic and which upholds the dignity of employees. They should provide all employees with access to training and development of necessary skills for career advancement, on an equal and non-discriminatory basis. They should uphold the freedom of association and the effective recognition of the right to collective bargaining of labour, have an effective grievance redressal system, should not employ child or forced labour and provide and maintain equality of opportunities without any discrimination on any grounds in recruitment and during employment.
4. Respect for Human Rights: Companies should respect human rights for all and avoid complicity with human rights abuses by them or by third party.
5. Respect for Environment: Companies should take measures to check and prevent pollution; recycle, manage and reduce waste, should manage natural resources in a sustainable manner and ensure optimal use of resources like land and water, should proactively respond to the challenges of climate change by adopting cleaner production methods, promoting efficient use of energy and environment friendly technologies.
6. Activities for Social and Inclusive Development: Depending upon their core competency and business interest, companies should undertake activities for economic and social development of communities and geographical areas, particularly in the vicinity of their operations. These could include: education, skill building for livelihood of people, health, cultural and social welfare etc., particularly targeting at disadvantaged sections of society.

### **Answer 7(d):**

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The following steps must be applied to every aspect of the Whole Life-cycle Costing (WLCC) with the help of Operational Research (OR) methods which consist of a number of well-defined scientific steps:

- (1) Formulation of the problem, establishing the objectives and any constraints that may apply;
- (2) Building a model that represents the system under analysis;
- (3) Using the model in order to obtain a solution to the problem;
- (4) Comparing a solution obtained by means of the model with that in current use;
- (5) Evaluating the results and monitoring the performance of the system through changing conditions.

### **Answer 7(e):**

- (i) The Kumar Mangalam Birla Committee Report was the first formal and comprehensive attempt to evolve a Code of Corporate Governance, in the context of prevailing conditions of governance in Indian companies, as well as the state of capital markets at that time.

The recommendations of the Kumar Mangalam Birla Committee, led to inclusion of Clause 49 in the Listing Agreement in the year 2000. These recommendations, aimed at improving the standards of Corporate Governance, are divided into mandatory and nonmandatory recommendations.

- (ii) Philanthropy means the act of donating money, goods, time or effort to support a charitable cause in regard to a defined objective. Philanthropy can be equated with benevolence and charity for the poor and needy. Philanthropy can be by an individual or by a corporate.

Corporate Social Responsibility (CSR) on the other hand is about how a company aligns their values to social causes by including and collaborating with their investors, suppliers, employees, regulators and the society as a whole. A CSR initiative of a corporate is not a selfless act of giving; companies derive long-term benefits from the CSR initiatives and it is this enlightened self interest which drives the CSR initiatives in companies.

### **Answer 7(f):**

The following are the few factors and influences which have led to increasing attention being devoted to Corporate Social Responsibility (CSR) by the Corporates:

- (i) Globalization – coupled with focus on cross-border trade, multinational enterprises and global supply chains — is increasingly raising CSR concerns related to human resource management practices, environmental protection, and health and safety, among other things.
- (ii) 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.
- (iii) Consumers and investors are showing increasing interest in supporting responsible business practices and are demanding more information on how companies are addressing risks and opportunities related to social and environmental issues.

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- (iv) Citizens in many countries are making it clear that corporations should meet standards of social and environmental care, no matter where they operate.
- (v) 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.