Paper 13 – Corporate Law and Compliance

Section – A

Question 1.

a) The Subscribed Share Capital of Good Company Ltd at the end of the financial year ending 31.03.2013 was ₹ 20 Crores, out of which 2 Public Financial Institutions were holding Share Capital amounting to ₹ 3 Crores. During the financial year 2012-13 the Company through public issue of shares raised its Subscribed Capital by additional ₹ 60 Crores. Out of ₹ 60 Crores, the 2 Public Financial Institutions were further allotted shares amounting to ₹ 20 Crores, raising the total contribution of these 2 institutions to ₹ 23 Crores before the date of the Company's closure of books for AGM scheduled for 15.09.2013, where Auditors were to be appointed.
The Company as usual, by getting an ordinary resolution passed, appointed the Auditors. A group of Shareholders of the Company alleges that the appointment of Auditors is violative of certain provisions of the Companies Act, 1956. They however, did not raise any objection to the appointment of auditors at the previous AGM held on 10.09.2012.Stating provisions, justify the following-

i) Whether the contention of the Shareholders is tenable?
ii) If the contention of shareholders be tenable, what action should the Company take for the appointment of Auditors at the AGM scheduled for 15.09.2013?
iii) Would your answer be still the same, in case the total Subscribed Capital contributed by the 2 PFI is only ₹ 10 Crores, including the previous Contribution of ₹ 3 Crores?

b) Sahil an employee of M/s Moon Ltd, met with an accident and died. The accident occurred when Sahil was on company's duty. He held 100 Shares partly paid. Normally the Company has a first and paramount lien on the shares. The Board of Directors, however, relaxed the said provision with regard to the 100 Shares held by Sahil as a goodwill gesture on the part of the Company. Is the action of the Company valid? State the reasons. Also state whether the Company's lien can be extended to dividend payable on such Shares.

c) AGM of Epic Ltd has been scheduled in compliance with the Act. In the connection, it has some Directors who are rotational and out which some have been appointed long back, some have been appointed on the same day. Decide in this connection,

i) Which of the Directors shall be retiring by rotation and be eligible for re-election?
ii) In case two Directors were appointed on the same day, how would you decide their retirement by rotation?
iii) In case the Meeting could not decide how the vacancies caused by retirement to be dealt with, what shall be consequences?
iv) What will be your answer, assuming that the matter could not be decided even at the adjourned meeting?

Answer:

The provisions relating to Appointment of Auditor by Special Resolution. [Sec. 224A]

1. **Special Resolution:** Sec.224A of the Act states that Special Resolution is required for appointing or reappointing at each AGM, the Auditor in the case of a Company in which not less than 25% of the Subscribed Share Capital is held, whether singly or in any combination by -
   i) A Public Financial Institution or a Government Company or the Central Government or any State Government, or
   ii) Any financial or other institution established by a Provincial or State Act in which a State

Government holds not less than 51% of the Subscribed Share Capital, or

iii) A Nationalised Bank or an Insurance Company carrying on general insurance business.

2. **Omission by Company:** Where a Company referred to above omits or fails to appoint an Auditor(s) by a special resolution in its AGM, the Central Government shall have the power to appoint a person to fill the vacancy u/s 224(3).

3. **25% Holding:**
   i) For determining 25% holding, the material date shall be the date of the AGM in which the special resolution is required to be passed.
   ii) In cases where the holding is less than 25% on the date of notice, but exceeds 25% as on the date of AGM, it is advisable for the Company to -
      - adjourn the meeting, issue another notice to the members for appointment of Auditors by special resolution and pass the special resolution at the adjourned meeting, or
      - omit or pass over the item on the agenda regarding the appointment of Auditor.

Hence with reference to the above provisions, we may conclude

i) **For AGM held on 10/09/2012:** The holding of Public Financial Institution was ₹ 3 Crores ÷ ₹ 20 Crores =15%. Hence Sec.224A is not attracted. Hence, appointment of Auditor(s) by an Ordinary Resolution is **valid.**

ii) **For AGM held on 15/09/2013:** The holding of Pubic Financial Institutions will be ₹ 23 Crores ÷ ₹ 80 Crores = 28.75%. Hence, special resolution is required to be passed for appointment of Auditor(s), in terms of Sec.224A. Appointment by way of ordinary resolution is **not valid. Hence**, the Shareholder's contention is tenable.

iii) If the Total Subscribed Capital of Public Financial Institution is only ₹ 10 Crores out of ₹ 80 Crores, the holding is only 12.5%. In such case, special resolution u/s 224A is not required.

In case special resolution is not passed, as per the required provisions, as in case (ii) above, the Central Govt would appoint the auditor as per the provisions stated below.

1. Sec. 224(3) of the Act provides that where at the AGM, no Auditors are appointed or re-appointed, the Central Government may appoint a person to fill the vacancy.
2. Under Sec. 224(4), the Company shall give notice of the fact within 7 days to the Central Government (Regional Director), Of its power becoming exercisable.
   3. If the Company fails to give such notice, the Company and every Officer of the Company who is in default shall be punishable with fine, which may extend to ₹ 5,000.
4. Where a Company is required to appoint an Auditor at an AGM by passing a special resolution, but omits or fails to pass such resolution due to any reason, it shall be deemed that no Auditor has been appointed by the Company at its AGM, and the provisions of Sec.224(3) of the Act will be attracted. [Sec.224A(2)]

b) The Company shall have a first and paramount lien-

i) On every Share payable in respect of that Share,

ii) On all Shares registered in the name of a single person for all moneys payable by him or his estate to the Company.

The Board of Directors at any time can declare any Share to be fully or partly exempt from the above provisions.

The Company lien on Shares can also be extended on dividends payable on such Shares. It is assumed that the AOA of the Company do not specifically exclude any provisions contained in TABLE A.

c) Case i: Directors liable to retire by rotation shall be determined in the following manner –

1. Those who have served the longest as Director will retire first.
2. If two or more Directors were appointed on the same day, Directors liable to retire may be determined as per any agreement between them. In the absence of any agreement in this regard, the Retiring Directors shall be determined by draw of lots.

Case ii: Directors liable to retire may be determined as per any agreement between them. In the absence of any agreement in this regard, the Retiring Directors shall be determined by draw of lots.

Case iii: If vacancy is not filled up, and the Meeting has not expressly resolved not to fill the vacancy, the meeting will stand adjourned till the same day in the next week, at the same time and place.

Case iv: Deemed re-appointment. If Resolutions are lost, there is not deemed re-appointment.

Question 2.

a) Mr. Shiv is a Director in 14 Public Limited Companies as on 30.07.2013. He continues to be so till 24.09.2013. The following Companies appoint Mr. Shiv as a Director at their respective AGMs held on dates mentioned against their names.

Company	Date of AGM
IMP Ltd	29.09.2013
URGENT (P) Ltd	10.03.2013
City Traders Association (Sec. 25 Company)	26.09.2013
HURRY Ltd	25.09.2013

State the options available to Mr. Shiv in respect of accepting or not accepting the appointment of the Directors of the above Companies.

b) Super Cement Limited appointed Gautam as Statutory Auditor of the Company at the AGM held on 30th September 2012. The next AGM was held on 30th September 2013 but it was adjourned to 30th November 2013 for consideration of the accounts for the year ended 31* March 2013. Gautam continued to function as Statutory Auditor of the Company even though a new Auditor was appointed in his place at the AGM held on 30th September 2013. Justify with provisions of Companies Act.

c) In ABC Ltd, three Directors were to be appointed. The item was included in agenda for the AGM scheduled on 30th September, 2013, under the category of 'Ordinary Business'. All the three persons as proposed by the Board of Directors were elected as Directors of the Company by passing a 'Single Resolution' avoiding the repetition (multiplicity) of resolution. After the Three directors joined the Board, certain Members objected to their appointment and the resolution. Examine -

i) Whether the contention of the Members shall be tenable and whether both the appointment of Directors and the 'Single Resolution' passed at the Company's AGM shall be void.

ii) What would be your answer in case the Company in question is an 'Association not for Profit" incorporated u/s 25?

Answer:

a) Directorship in Pvt. & Sec. 25 Company: U/s 278, Directorships in a Private Company or Sec.25 Company is excluded from the maximum limit of 15 Directorships. Therefore, Mr. Shiv can accept appointments in URGENT (P) Ltd and City Traders Association.

Directorship in Public Companies:

1. Acceptance of appointments in IMP Ltd and HURRY Ltd will result in holding of more than 15 Directorships by Mr. Shiv. Since the time gap between these appointments is less than 15 days, they constitute "new appointments".
2. U/s 277(2), if the existing Directorship is less than 15 and fresh appointments in other Companies is made, taking the total beyond 15, the Director concerned should choose the Directorships he wishes to continue, within 15 days from the last appointment. Otherwise, all new appointments will become void.
3. Hence, in the given case Mr. Shiv has to choose the Directorships he wishes to continue within 14.10.2013 (i.e. 15 days from date of last appointment, 29.09.2013). Otherwise appointments in both IMP Ltd and HURRY Ltd will become void.

b)

1. If for any reason the next AGM is adjourned to a later date subsequent to the date on which it was to be convened, the Auditor will continue to hold office till the conclusion of the Adjourned Meeting, as Adjourned Meeting is a continuation of Original Meeting.
2. If the new Auditor appointed in his place at the Original Meeting (when the Original Auditor was due to retire) and the meeting was adjourned, the new auditor can function as a Statutory Auditor only from the conclusion of Adjourned Meeting.
3. In this case Gautam will continue to hold the office till the conclusion of the Adjourned Meeting held on 30th Nov 2013.
4. Also the new Auditor can function as a Statutory Auditor only after the conclusion of the Adjourned Meeting i.e. after 30th Nov 2013.

c)

Issue i: Appointment will be void u/s 263, unless the motion is preceded by a unanimous resolution, authorizing appointment of two or more Directors by a single resolution.

Issue ii: Sec. 263 is not applicable for Companies incorporated u/s 25. Hence, appointment is valid in such case.

Question 3.

a) A Company had Current Profit after Depreciation and Tax of ₹ 17,00,000. In arriving at this profit, a deduction of ₹ 3,00,000 was made in respect of the Reserve created on account of Investment Allowance. The Company has proposed a rate of dividend at 15% on its Equity Share Capital of ₹ 6,00,000 and 10% on Preference Share Capital of ₹ 6,00,000. The Company also proposes to transfer to Reserves 10% of the current profit. Comment.

b) State whether the following persons can be appointed as a Director of a Public Company -

- **i) Andrew, who has huge personal liabilities far in excess of his assets and properties, has applied to the Court for adjudicating him as an insolvent and such application is pending.**
- **ii) Bunny who was caught red handed in a shop lifting case 2 years ago, was convicted by a Court and sentenced to imprisonment for a period of 8 weeks.**
- **iii) Ceasar, a former Bank Executive was convicted by a Court 8 years ago, for embezzlement of funds and sentenced to imprisonment for a period of 1 year.**
- **iv) David is a Director of DIAMOND Ltd which has not filed its Annual Returns pertaining to the AGMs held in the calendar years 2011, 2012 and 2013.**

c) India & Sons Ltd issued Shares of the nominal value of ₹ 10 per Share, out of which ₹ 5 was payable on application and balance ₹ 5 was payable on call. The call money was invited

by the Board of Directors but some Shareholders, including a Non-Executive Director, failed to pay the same within the prescribed period. Explain the status of Director who defaulted in paying the call money.

Answer:

a)

1. **Company Law Board Clarification:** CLB has clarified that –
   (i) Profit after Tax and Depreciation is the profit u/s 205(2A) for the purpose of declaring dividends.
   (ii) Fixed Preference Dividend is not to be considered in respect of Sec. 205(2A) of the Act.
2. **Investment Allowance Reserve:** Investment Allowance Reserve of ₹ 3,00,000 is an item of prior deduction (i.e. charge) for determination of the figure of Divisible Profits. Hence, the sum of ₹17,00,000 (i.e. after deduction of Investment Allowance Reserve) is the Profit for the purpose of declaring dividends.
3. **Transfer to Reserve:** For an Equity Dividend of 15%, the transfer to reserve should be not less than 5% of the Current Profits as per the Companies (Transfer of Profits to Reserves) Rules, 1975. However, the Company can transfer a maximum of 10% only. In case the Company transfers more than 10% of Current Profits to Reserves, the other conditions specified in the above Rules have to be satisfied.
4. **Conclusion:**
   - The declaration of 15% dividend is legally valid.
   - Since the Company proposes transfer 10% of the current profits to reserves, there is no question of voluntary higher transfer u/s 205(2A). The requirement of transfer of "not less than 5%" is duly met.

b)

Person	Eligibility	Remark / Reason
Andrew	Disqualified	An individual who has applied to be adjudged as an insolvent and application is pending is not qualified for appointment u/s **274(l)(c).**
Bunny	Qualified	An individual who is convicted by a Court for an offence involving moral turpitude for a period of 6 months or more, is not qualified for appointment u/s 274(l)(d). Since Bunny was sentenced to imprisonment for a period of less than 6 months [8 weeks (i.e. 2 months)], he is not subject to disqualification.
Ceasar	Qualified	An individual who is convicted by a Court for an offence involving moral turpitude for a period of 6 months or more, and a period of 5 years has not lapsed from the date of expiry of sentence is not qualified for appointment u/s 274(l)(d). Here, Ceasar was sentenced to imprisonment for a period of 1 year (i.e. 6 months or more) but 8 years has lapsed from the date of expiry of sentence. Therefore, he is not subject to disqualification.
David	Qualified	Director of a Public Company which has not filed its Annual Accounts and Annual Returns for continuous 3 financial years is disqualified from appointment as Director in any other Public Company u/s 274(l)(g). Here, DIAMOND Ltd has not filed its Annual returns for 3 financial years. Disqualification u/s 274(l)(g) is attracted only when both the documents are not filed for 3 continuous financial years. Since

		DIAMOND Ltd has not furnished its Annual Returns only, Mr. D is not subject to disqualification.

c) Failure to pay call money (for single and joint holdings) within 6 months from the date fixed for payment of call, leads to vacation of office as Director u/s 283(1). Whether such Director is Executive Director or Non-Executive Director is irrelevant in this regard. However, Central Government may, by Notification in Official Gazette, remove such disqualification. In such case, the Director can continue in Office.

Question 4.

a) Ultimate Industries Limited has constituted "Investor Education and Protection Fund" as required under the Companies Act, but so far no amounts have been deposited into the said account. Explain the amounts payable to the credit of the said account and the period within which the amounts shall be paid. Also state the procedure of filing of declaration about unpaid amounts u/s 205C.

b) Wonderful Industries (P) Ltd is a Company in which there are 3 Shareholders and all of them are Directors of the Company. Mr. Wonder holds 60% of the Paid-Up Share Capital while the balance 40% of Shares is held equally by the remaining Directors. Because of some rift among them, the two Directors holding 40% Share Capital have aligned and started preventing the holding of any meetings of the Company. The AOA of the Company provide for a minimum of 2 Directors / Members as Quorum for Board Meetings as well as General Meetings. Mr. Wonder has become helpless and seeks your advice to tackle the situation. Advice.

c) Xee was appointed as MD of Speed Ltd, for a period of 5 years w.e.f. 01.01.2013. Since his work was found unsatisfactory, his services were terminated from 15.08.2013 by paying compensation for loss of office. Later, the Company discovered that during his tenure of office Xee was guilty of many corrupt practices and that he should have been removed without payment of compensation. Advise the Company whether the services of the MD can be terminated without payment of compensation as provided in the agreement and whether the Company can recover the amount already paid to Xee filing a suit.

Answer:

a) "Investor Education and Protection Fund" can be established only by Central Government. The Company shall only transfer the Unclaimed Dividend, Unclaimed Deposits, etc. from the Special Bank Account to the Investor Education and Protection Fund established by Central Government.

Filing of declaration about Unpaid Amounts u/s 205C.

1. **Applicability:** Every Company (including NBFC and Residuary Non-Banking Companies)
2. **Time Limit:** Within a period of 90 days after the holding of AGM or the date on which it should have been held as per Sec. 166, and every year thereafter till completion of the 7 years period, the Company shall identify the Unclaimed Amounts as referred in Sec.205C(2), and separately furnish and upload a statement or information on its own website as also on the MCA Website or any other website as may be specified by the Government.
3. **Form: e-Form 5 INV,** separately for each year.
4. **Information to be furnished:**
   (a) Names and last known Addresses of the persons entitled to receive the sum,
   (b) Nature of Amount,
   (c) Amount to which each person is entitled,

(d) Due Date for transfer into the Investor Education and Protection Fund, and
(e) Such other information as considered relevant for the purpose.

5. **Verification of e-Form:** The information referred shall be duly verified and certified by a CA or CS or CWA practicing in India or by the Statutory Auditors of the Company.
6. **Default in filing of information:** Failure to furnish or furnishing of false information, the Company, and every Officer of the Company who is in default, shall be liable and in such case the provisions of Sec.629A shall be applicable.

b)

i) Mr. Wonder can take steps to remove the two Directors who are obstructing the holding of a Meeting with a view to continue and prevent the majority Shareholder from exercising his right.
ii) Sec.284 gives a statutory right to any member to remove by an ordinary resolution, any Director in whatsoever manner or whatsoever terms appointed.
iii) Thus where one of the only 2 Shareholders / Directors who was holding 51% of the Shares wanted to remove his fellow Director who did not attend the meeting to frustrate him because the AOA required quorum of two, Tribunal can order a meeting to be called with the presence of one as sufficient quorum.
iv) The right of the majority Director / Shareholder to remove other Directors cannot be permitted to be vetoed by the quorum requirement.
v) Where the Directors attempt to avoid their removal, by omitting to call a meeting or by not attending the meeting with a view to creating a situation of no quorum, the Court / CLB / Central Government can convene the necessary meeting u/s 186. **[Re. El Sombrero Ltd]**

c)

i) Compensation is not payable where the Director has been guilty of fraud, or breach of trust, or gross negligence, or gross mismanagement of conduct of affairs of the Company.

ii) In **Bell vs Lever Bros,** it was held that a MD is not bound to refund the compensation money and to disclose any breach of his fiduciary obligation so as to give the Company an opportunity to dismiss him. By applying the principle laid down in the above case decision, the Company may not be able to recover the compensation money already paid to the MD.
However, compensation wrongly paid can be recovered u/s 630 in respect of wrongful withholding of property. In such case, it must be proved to the Court that the MD has obtained the amount wrongfully.

Question 5.

a) Successful Ltd proposes to appoint Mr. Edward and Mr. Frank as Whole-Time Director for a period of 3 years w.e.f. 01.06.2013. The Company proposes to pay a consolidated salary of ₹ 80,000 per month to each of them.
Mr. David, the MD of the Company, has been appointed for a period of 5 years w.e.f. 01.01.2011 on a remuneration payable in the form of commission at the rate of 5% of Net Profits, subject to a minimum remuneration of ₹ 80,000 p.m.
The Effective Capital of the Company at the end of the financial year ending 31.12.2012 is ₹ 4.5 Crores and it has been increased to ₹ 5.5 Crores on 01.04.2013 by way of Rights Issue of Equity Shares. The Company did not repay public deposits on the date of maturity from 1st January onwards, but the default was made good on 01.04.2013.
The Company seeks your advice on the steps to be taken to comply with the requirements of Sec.269 read with Schedule XIII with regard to the proposed appointment of Mr. Edward and Mr. Frank as WTD. Advise explaining the relevant provisions.

b) A Private Company which has become a Deemed Public Company seeks your advice on the following matters -

- **i) Maximum Remuneration that can be paid to a Director who is neither in the whole-time employment of the Company nor a Managing Director, and the minimum remuneration that can be paid to such Director in the event of loss in any financial year.**
- **ii) Payment of Sitting Fees to Directors at ₹3,000 per Board Meeting as per its AOA.**

c) Advise the Company on the matters relating to sending of Notices of Board Meetings:

- **i) Raja, a Director states that he will not be able to attend next Board Meeting.**
- **ii) Bakshi goes abroad for 5 months and an Alternate Director has been appointed in his place.**
- **iii) Javed, Director residing abroad representing the Foreign Collaborator and AOA of the Company provides for sending notice to such Directors.**

Answer:

a) Default in repayment of Public Deposits in the current year does not operate as ineligibility under Schedule XIII. It should pertain to the financial year preceding the date of appointment of Managerial Person.

1. Effective Capital as on 31.12.2011 (i.e. last day of financial year preceding the date of appointment) is relevant. Rights Issue and Increase in Capital is not relevant.
2. For Effective Capital of ₹ 4.5 Crores, maximum remuneration payable without Special Resolution of Shareholders or Central Government approval = ₹1,00,000 per month per person. [Schedule XIII]

Since proposed remuneration to each individual is only ₹ 80,000 p.m, the Company can pay the remuneration to its WTDs without Special Resolution of Shareholders or Central Government approval.

b) Remuneration to Directors: A Private Company which has become a Deemed Public Company has to regulate the remuneration payable to the Ordinary Directors as per Sec.309 read with Sec. 198. The guidelines are as under -

i) Maximum Remuneration payable to an Ordinary Director = (1) 1% of Net Profits, if there is a MD / WTD / Manager, or (2) 3% of Net Profits, in any other case. Further, the overall managerial remuneration shall not exceed 11% of the Net Profits in any case.

ii) In case of no or inadequate profits, remuneration to MD / WTD / Manager may be paid within the limits prescribed under Schedule XIII without the approval of the Central Government. In other cases, approval of the Central Government is required. Hence, approval of the Central Government is required to pay remuneration to Ordinary Director, in case of losses or inadequate profits.

Sitting Fees: Ordinary Directors can be paid only Sitting Fees for attending the Board Meetings in the event of loss in any Financial Year. Payment of any sum as remuneration to the Ordinary Directors in any Financial Year where the Company has incurred a loss requires approval of the Central Government u/s 198(4). A Private Company on its conversion into a Public Company or on becoming a Deemed Public Company cannot pay more than the prescribed amount as Sitting Fees to its Directors, without the approval of the Central Government. The maximum Sitting Fees is prescribed by the Central Government is ₹ 20,000. Hence, in the above case, the Company can pay the Sitting Fees to its Directors.

c)

i) It is necessary to send notice to each and every Director who is for the time being in India, even if a particular Director has informed the Company that he would not be able to attend **[Re. Portuguese Consolidated Copper Mines Ltd].** The right to receive notice cannot

be waived. Hence, notice must be given to Raja.

ii) Where the Company has appointed an Alternate Director, notice of the meeting should be given to both the Original Director as well as the Alternate Director. So, Notice must be given to Bakshi, as well as to the Alternate Director.

iii) Notice to Directors abroad should be given in a reasonable manner, so as to enable them to attend the Meeting. Since AOA provides for sending notices to Directors abroad, such notices should be sent properly by the Company. Hence notice should be sent to Javed.

Question 6.

a) Decide on the following –

i) A Managing Director who has completed 70 years of age is to be re-appointed for 5 years. The remuneration will be the limits prescribed under Schedule XIII.

ii) X, the Managing Director of Y Limited is also the Managing Director of Z Limited wants to draw remuneration from both the Companies.

iii) The Directors wish to increase the Sitting Fees payable for attending Board Meetings from ₹ 2,000 to ₹ 20,000 by passing the resolution in the Board Meeting.

b) The AOA of a Company fixed 3 as the quorum for the meeting of the Board. At the meeting of the Board, all the five Directors were present. They allotted the Shares of the Company to three of the Directors. Is it valid?

c) Perfect Limited has 9 Directors out of whom 3 Directors have gone abroad. The Chairman had an urgent matter to be approved by the Board of Directors which could not be postponed till the next Board Meeting. The Company, therefore, circulated the resolution for approval of the Directors. 4 out of 6 Directors in India approved the resolution. The Company claimed that the resolution was passed. Examine with reference to the provisions of section 289 of the Companies Act, 1956 the validity of the resolution.

Answer:

a)

Issue	Principle	Conclusion
i) Reappointment of MD who is more than 70 years of age	A Company can appoint / re-appoint a managerial person who has attained the age of 70 years, without approval of the Central Government, provided his appointment is approved by special resolution.	The Company can re-appoint the MD who is more than 70 years of age, by passing a special resolution in a general meeting.
ii) Remuneration drawn by MD of two Companies	A Managerial Person shall draw remuneration from one or both Companies, if the total remuneration drawn from the Companies does not exceed the higher maximum limit admissible from any one of the Companies of which he is a managerial person.	X can draw remuneration from both the Companies, provided the same is within the overall ceiling mentioned in Schedule XIII.
iii) Increase in Sitting Fees from ₹ 2,000 to	Two issues are relevant here - (a) AOA Sanction: Remuneration payable to Directors, including Sitting Fees shall	The Company has to pass a resolution in the general meeting or alternatively

₹ 20,000 by resolution in Board Meeting	be determined either by the AOA or by a resolution (special resolution if AOA so require) passed in a general meeting. (b) Ceiling Limit: If the Sitting Fees exceeds the ceiling limit prescribed by Central Government, then approval of that Government is required. In this case, the Sitting Fees of ₹ 20,000 can be paid only if the Company has Paid Up Capital and Reserves of ₹ 10 Crores or more, or Turnover of ₹ 50 Crores or more.	amend the AOA by special resolution, to enable the Company to pay Sitting Fees to Directors within the maximum limits prescribed by Central Government.

b) The Company has fixed the quorum for a Board Meeting at 3. In this case, out of 5 Directors present at the meeting, the number of interested Directors is 3. As such the remaining two Directors who are not interested do not constitute a quorum and hence the meeting cannot be validly convened. So, the allotment of shares at the aforesaid meeting is not valid. **[Sir Hormusji A Wadia 1921 AIR 372 (Bom.)]***
Proviso to Sec. 287(2) cannot also be availed of as the interested Directors, (I.e. 3) are not equal to or more than two-thirds of the Total Strength of the Directors. [5 × 2/3 = 4].
Therefore, allotment made at the Board meeting is not valid.

b) Quorum of Meeting = I/3rd of total directors = 1/3 of 9 = 3
Resolution is valid if the same is approved by:

i) All the Directors present in India, i.e all 6 Directors out of 6 present in India OR
ii) A majority of all Directors, i.e 5 out of 9 Directors.

In above case, the aforementioned conditions are not satisfied. Hence, the resolution is not validly passed.

Question 7.

a) In a meeting of the Board of Directors of Jewel Ltd, 8 Directors were present. After completion of discussion on the matter, voting was done. 3 Directors voted in favour of the motion, 2 Directors voted against the motion while 3 Directors abstained from voting. State whether the motion was carried or not.

b) Advise the Board of Directors of a Public Company about their powers in respect of the following proposals -

i) Donation of ₹5,00,000 to a Hospital established exclusively for the benefit of employees.
ii) Buyback of Shares of the Company for the first time up to 10% of the Paid-Up Equity Capital.
iii) Delegating to the MD of the Company, the power to invest surplus funds of the Company in the Shares of some Companies.

c) The Board of Directors of Super Shoes Ltd at a Meeting held on 15.01.2013 resolved to borrow a sum of ₹15 Crores from a Nationalized Bank. Subsequently, the said amount was received by the Company. One of the Directors, who opposed to the said borrowings as not in the interest of the Company, has raised an issue that the said borrowing is outside the powers of the Board of Directors. The Company seeks your advice and the following data is given for your information –

1. Share Capital	**₹ 5 Crores**
2. Reserves and Surplus	**₹ 5 Crores**
3. Secured Loans (Bank Borrowings as specified above)	**₹ 15 Crores**
4. Unsecured Loans	**₹ 5 Crores**

Answer:

a)

Analysis:

i) No. of Directors present and voting = 8 present - 3 Abstentions = 5
ii) No. of votes in favour of the motion = 3
iii) No. of votes against the motion = 2

Conclusion: Since votes in favour (3) exceed votes against (2), the motion is carried, i.e. considered to be passed by majority, unless it is a matter requiring unanimous voting as in the case of a resolution u/s 372A(2).

b)

Proposal	Powers
1. Donation to Hospital for the exclusive benefit of the employees	(a) Sec.293(l)(e) is applicable only if the donations are made to funds not directly related to the welfare of the employees. (b) Here, the donations are given to hospitals established for benefit of the employees. Hence the Board is empowered to make the proposed donation.
2. Buyback of Shares upto 10% of the Paid Up Capital of the Company	(a) Board has the power to buy back Shares upto 10% of the Total Paid Up Capital and Free Reserves. (b) Since the buyback does not exceed 10% of the Paid Up Capital, the Board can proceed with the proposal without the Shareholders' approval.
3. Delegation of power to invest in shares of another Company, to Managing Director	(a) Sec.292 empowers the Board to delegate to the Managing Director the power to invest its surplus funds. (b) However, u/s 372A, investment in any Body Corporate cannot be made unless it is sanctioned by a resolution passed at the meeting of the Board of Directors with the consent of all the Directors present. (c) In the given case, the investment is proposed to be made in the Shares of another Company. Hence, Sec. 372A is attracted. Sec. 372A does not provide for delegation, and so, the proposed delegation is not tenable in law.

c)

Maximum Amount that can be borrowed u/s 293 without Shareholders' approval:

Particulars	₹ (in Crores)
Paid Up Capital	5
Add: Free Reserves	5
Total Amount that can be borrowed without Shareholders' approval	**10**
Less: Amount already borrowed - Unsecured Loans	5
Further amount that can be borrowed without Shareholders' approval	**5**

Conclusion:

i) In the given case, the amount of ₹ 15 Crores borrowed from the Bank exceeds specified limits u/s 293(l)(d) and the borrowing is outside the powers of the Board.
ii) However, Shareholders have the power to ratify the act of the Board of Directors, if it is not beyond the powers of the Company as laid down in its MOA.

Hence, the management of the Company should convene an EGM and pass a resolution as required u/s 293(l)(d), to make the borrowing valid and binding on the Company and its Members.

Question 8.

a) Orange Ltd, which desires to authorize the Managing Director to enter into the following transactions and requires your advice in this regard.
- **i) Borrow money from the Bank for the purposes of making investment**
- **ii) Give donations to Charitable Trusts, where Directors act as Trustees**
- **iii) Give loan to Firms in which Directors are interested.**

b) The MD of Average Ltd wants to make a contribution to political party to the tune of ₹ 5 Lakhs. The Average Net Profits of the Company for the past three years is ₹ 120 Lakhs. Answer the following questions in view of the provisions of the Companies Act -
- **i) What is the maximum amount of political contribution that can be made by the Company?**
- **ii) Can a circular resolution be passed for authorizing such political contribution?**
- **iii) Can a Subsidiary of Average Ltd, which was incorporated last year, make such contribution?**

c) The Board of Directors of Best Ltd having a Paid-Up Share Capital of ₹ 40 Lakhs appointed Sole Products Ltd as SSA for a period of 5 years w.e.f. 01.04.2013 and the said appointment was approved by the Company in the next AGM held on 30.09.2013. The Directors of Better Ltd were holding fully Paid Up Shares of Face Value of ₹ 3 Lakhs in Best Ltd. Answer the following stating the provisions of substantial interest in case of SSA.
- **i) Is the appointment of the SSA in order?**
- **ii) Would your answer be different if both are Private Companies or if the Director of Better Ltd, acquired the aforesaid shares in All Products Ltd on 01.09.2013?**

Answer:

a)

Aspect	Description
Borrowing for making investment	U/s 292, the Board of Directors may also delegate to the MD, the power to borrow money otherwise than on debentures. The following conditions apply - (a) The Board must pass a resolution at its meeting authorizing the Managing Director to borrow from bank(s) money required for the Company's business. (b) The resolution delegating this power should specify the total amount outstanding at any one time up to which money may be borrowed by the MD. Care should be taken to ensure that while delegating the power to MD, the ceiling limit u/s 293(l)(d) (i.e. aggregate of Paid Up Capital and Free Reserves requiring consent in General Meeting) is not exceeded, and that the MOA permits borrowing
Donations to Charitable Trusts	(a) U/s 293(l)(e), the Board can contribute or donate to Charitable and Other Funds not directly related to the business of the Company or the welfare of its employees, any amount the aggregate of which will not, in any financial year exceed ₹ 50,000 or 5% of its average Net Profits during the 3 preceding financial years, whichever is greater. (b) The Board may also authorise the MD to exercise the power on behalf of the Board, provided such donations are not ultra vires MOA. (c) The power of the Board to donate to general charities is not conditional to the existence of any profits. In such case, they may contribute upto the limit of ₹ 50,000 given in Sec. 293(l)(e).
Loan to Firms where Directors	(a) A Company cannot directly or indirectly lend money to persons including Firms, in which Directors or their relatives are partners,

are interested	without obtaining prior approval of the Central Government in that behalf. So the Company must first seek the Central Government's approval u/s 295. (b) The power to make loans may be delegated u/s 292(l)(e). So, the Board must pass a resolution delegating this power to the MD and specifying the total amount up to which loans may be made by the delegate, the purpose for which loans may be made and the maximum amount of loans which may be made for each such purpose in individual cases. (c) By virtue of Sec. 291(1), the Board must see with reference to the MOA and AOA, whether the Company is authorised to exercise the power.

b)

i) Maximum Amount of Political Contribution = 5% of the Average Net Profits of 3 preceding financial years = 5% of ₹ 120 Lakhs = ₹ 6 Lakhs. Hence, the contribution of ₹ 5 Lakhs is in order.

ii) The power to make political contribution shall be exercised only by way of passing a resolution at a Board Meeting. So, Circular Resolution is not permissible.

iii) Any Company which has been in existence for less than 3 Financial Years is prohibited from making any political contribution. So, the Subsidiary of Average Ltd cannot make any political contribution.

c)

d) In the context of SSA, the SSA will have "Substantial Interest" in the Company -

If SSA is	Beneficial Interest is held by	Subject matter of interest
Individual	Individual or any of his relatives, whether singly or taken together.	Shares of the Company, the aggregate paid-up amount thereon exceeds the least of the following - • ₹ 5,00,000, or • 5% of the Paid-Up Share Capital of the Company.
Firm	One or more Partner(s) of the Firm or any relative of such Partner, whether singly or taken together.	
Body Corporate	Body Corporate or one or more of its Director(s) or their relatives, whether singly or taken together.	

i) Since Directors of the SSA hold more than 5% of the Paid Up Capital of the Company (5% of ₹ 40 Lakhs = ₹ 2 Lakhs, but Shareholding is ₹ 3 Lakhs), the appointment is not valid, unless previous approval of Central Government is obtained.

ii) If SSA acquires "Substantial Interest" subsequent to his appointment, approval of Central Government is not required for remaining duration of current tenure. In such case, the above appointment is valid.
Previous approval of Central Government will be necessary even if both the Companies (i.e. SSA & Appointing Company) are Private Companies. Sec. 294AA applies to Private Companies also.

Question 9.

a) Mr. Golu, a Director in Good Job Limited, took a Loan from the Company without obtaining the approval of the Central Government. Examine, under the provisions of the Companies Act, 1956 whether it is possible for him to avoid prosecution by applying to the Central Government for the approval or by refunding the loan taken by him from the Company. Also examine whether the offence could get compoundable u/s 621A. If so when the application for compounding the offence should be made, i.e. whether before or after the institution of prosecution? Who is the authority for compounding the offence?

b) The Board of Directors of XYZ Ltd has agreed in principle to grant loan worth ₹ 38 Lakhs to MNC Ltd. on the basis of the following information. Advise XYZ Ltd about the requirements to be complied with under the Companies Act, 1956 for the proposed Inter-Corporate Loan to MNC Ltd

1. **Authorised Share Capital** ₹ **1,00,00,000**
2. **Issued, Subscribed and Paid-Up Capital** ₹ **50,00,000**
3. **Free Reserves** ₹ **10,00,000**

Advice.

c) Summarise and state the restrictions with respect to appointment of an 'Office or Place of Profit'.

Answer:

a)

Issue 1: Effect of Refund:

i) Sec.295 envisages prior approval, and hence, Central Government will not entertain any application from the Company seeking approval for a loan already given to its Directors. No ex post facto approval can be given.

ii) Sec.295 provides for punishment of contravention by - (i) imprisonment upto 6 months, and / or (ii) fine upto ₹ 50,000.

iii) In the above case, by refunding the loan in full, it is possible to avoid punishment in the form of imprisonment, but it is not possible to avoid prosecution and punishment in the form of fine.

iv) Where any such loan has been repaid in full, no punishment by way of imprisonment shall be imposed, and where the loan has been repaid in part, the maximum imprisonment shall be proportionately reduced.

Issue 2: Compounding:

i) Sec.621A(7) is applicable for compounding of offences under the Act which are punishable by imprisonment, or with fine or with both. Such offences can be compounded with the permission of the Court.

ii) The offence may be compounded either before or after the institution of prosecution.

iii) The offence may be compounded by the Regional Director where the maximum amount of fine which may be imposed for such offence does not exceed ₹ 50,000 and in other cases by the Tribunal. In this case, the offence may be compounded by Regional Director, as the maximum fine u/s 295 is only ₹ 50,000.

b)

	₹
1. Paid-Up Capital + Free Reserves = ₹ 50 Lakhs + ₹ 10 Lakhs	60,00,000
2. 60% of Paid-Up Capital and Free Reserves	36,00,000
3. 100% of Free Reserves	10,00,000
4. Maximum Amt that can be lent without Shareholders' Approval = Higher of (2) & (3)	36,00,000

Since the proposal to grant loan exceeds the maximum amount that can be borrowed without Shareholders' approval, the Company has to comply with the following procedures -

i) Check the provisions of the MOA and AOA of the Company regarding the powers of the

Company and of its Board to grant loan to other Body Corporate. If the powers are not available, take appropriate action to amend the AOA.

ii) Convene a Board Meeting to consider the Inter-Corporate Loan. Unanimous consent of all Directors is required in this regard.

iii) Issue Notice for convening a General Meeting for according approval to the proposed loan, by a special resolution. The Notice should contain the particulars required to be specified u/s 372A.

iv) Obtain prior approval of Public Financial Institutions, wherever applicable.

v) Ensure that the Company has not defaulted either directly or indirectly in complying with the provisions of Sec.58A.

vi) Obtain the approval of the Company by passing Special Resolution in the General Meeting.

vii) Record the prescribed particulars in the Register maintained u/s 372A, within 7 days of the making of the loan.

viii) File Form 23 with the ROC within 30 days from the date of passing the Special Resolution.

c) The restrictions with respect to appointment to an "OPP" [Sec. 314]

Sec. 314 regulates the appointment to an "Office or Place of Profit" under the Company. The salient features of the restrictions are given below –

Particulars	Sec.314(I) [Shareholders' approval only]	Sec.314(IB) [Shareholders' & CG approval]
1. Restriction applies to	(a) Director of a Company, (b) Following persons if the total monthly remuneration is not less than ₹ 50,000 - (i) Partner of the Director, (ii) Relative of the Director, (iii) Firm in which the Director is a Partner, (iv) Firm in which the Relative of a Director is a Partner, (v) Private Company in which the Director is a Director or Member, (vi) Director or Manager of a Private Company in which the Director is a Director or Member.	Following appointments to OPP, if the monthly remuneration is not less than ₹ 2,50,000 - (a) Partner of a Director or Manager, (b) Relative of a Director or Manager, (c) Firm in which Director or Manager is a Partner, (d) Firm in which the Relative of the Director or Manager is a Partner, (e) Private Company in which- (i) a Director, or (ii) Manager, or (iii) relative of either, is a Director or Member.
2. Monetary Limits	(a) Directors: No limit. (b) Other Persons as above: ₹ 50,000 or more, p.m.	All persons as above: ₹ 2,50,000 or more p.m
3. Restrictions relevant for Director or Manager	Only for Directors, his relatives, etc. Restriction does not extend to Managers.	Restriction applies to both Directors and Manager, and their relatives, etc.
4. Exceptions to restriction	The following positions are not covered by the restriction - • Managing Director of the Company, • Manager of the Company, • Banker of the Company, • Trustee for Debenture holders of	These exceptions are not available here. Appointment of specified persons (as in 1 above), to these positions will also attract the provisions of Sec.314(IB)

	the Company.	
5. Co. to which restriction applies	Such OPP cannot be held - (a) under the Company, or (b) under any Subsidiary of the Company.	Such OPP cannot be held "in the Company". [There is no restriction to hold such OPP in the Subsidiary.]
6. Shareholders' approval	By Special Resolution.	By Special Resolution.
7. Nature of Shareholders' approval	Subsequent consent in the first General Meeting held after the holding of OPP is sufficient.	Prior consent is required.
8. Central Govt approval	Not required.	Required if the remuneration exceeds the monetary limits specified in (1) above. Application for approval should be made in **e-Form 24B.**

Question 10.

a) Following transactions are made by a Public Company. Examine the same whether these transactions can be termed as Loans to Directors requiring the approval of the Central Government as required u/s 295 -

i) A Salary Advance to an employee, who is the spouse of the MD of the Company.
ii) Loan to its 100% Subsidiary Company.
iii) Loan to a Firm in which a Director of the Company is a Partner.
iv) Sale of Company's Flat to a Director at prevailing market price, out of which the Director pays 50% immediately and contracts to pay balance amount in 10 equal annual instalments.
v) Making a deposit with the Landlord under a licence arrangement for securing a residential accommodation for the MD of the Company.

b) Good Quality Textiles Ltd is a Company engaged in manufacture of fabrics. The Company has investments in Shares of other Bodies Corporate including 70% Shares in Good Quality Cotton Co. Ltd and it has also advanced loans to other Bodies Corporate. The aggregate of all the investments made and loans granted by Good Quality Textiles Ltd exceeds 60% of its Paid Up Share Capital and Free Reserves, and also exceeds 100% of its Free Reserves. In course of its business requirements, Good Quality Textiles Ltd has obtained a Term Loan from IDBI and the same is still subsisting. Now the Company wants to increase its holding from 70% to 80% of the Equity Share Capital in Good Quality Cotton Co. Ltd by purchase of additional 10% Shares from other existing Shareholders. State the legal requirements to be complied with by Good Quality Textiles Ltd under the Companies Act, 1956 to give effect to the above proposal.
Will your answer be different if the Company has defaulted in repayment of matured deposits accepted from the public?

c) The Board of Directors of Good Hope Limited propose to make the following appointments:
i) 'Sunil', son of 'Partha', a Director of the said Company, is proposed to be appointed as Managing Director of the Company on a monthly remuneration of ₹ 75,000.
ii) 'Disha', daughter of 'Queen', another Director of the said company, is proposed to be appointed as Accounts Manager on a salary of ₹ 60,000 per month.
iii) 'Bhairav', brother of 'Raja', another Director of the said company is proposed to be appointed as Purchase Manager in Good Hope Forgings Limited, a subsidiary of Good Hope Limited on a salary of ₹ 60,000 per month.

Explain the legal requirements under the Companies Act, 1956 to be complied with by the Company to give effect to the proposed appointments.

Answer:

a)

Transaction	Sec.295	Reason
i) Salary Advance to an employee, who is the spouse of the MD of the Company.	Not applicable - Not a loan at all	Salary Advance totalling ₹ 5,000 made to an employee of the Company who happens to be the wife of the MD does not per se amount to a loan so as to violate Sec.295. Also, the burden of proving that the transaction is a sham lies on the prosecution. **[M.R. Electronics Components Ltd vs Asst. ROC 61 CC 8]**
ii) Loan to its 100% Subsidiary Company.	Not applicable -It is a Loan, but covered by exception.	• Loan by a Holding Company to its Subsidiary Company is outside the purview of Sec. 295(1). • Prior approval of Central Government is not required for such loans. [Sec. 295(2)(b)]
iii) Loan to a Firm in which a Director of the Company is a Partner.	Loan - Sec.295 is applicable	Prior approval of Central Government is required.
iv) Sale of Company's Flat to a Director at prevailing market price, out of which the Director pays 50% immediately and contracts to pay balance amount in 10 equal annual instalments.	Not applicable - Not a loan at all	A Company selling one of its flats to one of its Directors on receiving half price in cash and agreeing to accept the balance in instalments does not give loan to its Director. It is a credit sale. It cannot be described even as an "indirect loan". **[Dr. Fredie Ardeshir Mehta vs UOI 70 CC 210]**
v) Making a deposit with the landlord under a licence arrangement for securing a residential accommodation for the MD of the Company.	Not applicable - Not a loan at all	• Where a Company secures residential accommodation for its MD's use by purchase or by entering into a licence arrangement under which the Company has to deposit a certain amount with the landlord, to secure compliance of the licence agreement, such deposit or the cost of purchase of property cannot be regarded as loan or advance to the MD attracting Sec. 295. • The said transaction cannot be termed as a book debt also Sec. 296. It is no concern of the MD on what terms the Company, secures premises for his residential accommodation.

b)

i) Sec.372A Applicability: Good Quality Cotton Company Ltd is not a wholly-owned Subsidiary of Good Quality Textiles Ltd. Hence, investments in such a Subsidiary Company is not covered by exemption u/s 372A (8)(e).

ii) Procedural Requirements: The highlights of the procedural requirements are –

(a) Unanimous consent to the proposal by all Directors present in a Board Meeting,

(b) Notice to Members for obtaining approval in a General Meeting along with the required particulars,

(c) Prior approval of PFI (IDBI / ICICI, etc),

(d) Passing of Special Resolution at General Meeting,

(e) Recording the prescribed particulars in the Register within 7 days of the investment,
(f) Filing Form 23 to ROC within 30 days of passing Special Resolution,
(g) Compliance with the guidelines, if any, prescribed by Central Government u/s 372A(7).

Sec.58A Default: If the Company has defaulted in payment of matured fixed deposits accepted from the public, the Company has violated Sec.58A(3A). Such Company is prohibited from making any additional investment till such default is subsisting. The Company must make good the default u/s 58A(3A) in order to give effect to the proposed additional investment.

c) Appointment of 'Sunil' as Managing Director: Appointment to the position of MD is outside the purview of Sec.314. Hence,
Procedure for Appointment of Sunil: Since Sunil is not a Director of the Company; steps must be taken to appoint him as Additional Director or First Director. Then he may be appointment as MD by complying with the requirements u/s 269 read with Schedule XIII. The appointment can be made by the Board subject to the approval of the Company in its General Meeting, as the proposed remuneration is within the limits laid down in Schedule XIII.
Appointment of 'Disha': Sec.314(IB): Special Resolution at the General Meeting is required for his appointment. Prior Consent in General Meeting is not required. Central Government Approval is also not required.
Appointment of 'Bhairav': Sec.314(I) : Bhairav', brother of 'Raja', would be covered by Sec. 314(I). So, consent of the Company by passing Special Resolution is needed as he draws monthly remuneration of ₹ 60,000 which is more than the prescribed limit of ₹ 50,000.

Question 11.

a) Notorius Ltd. proposes to enter into an Annual Maintenance Contract (AMC) for its processing plant with Honest (P) Ltd. Red, Lilac and Lavender are Directors in both the Companies. The contract was entered into for ₹ 60,000. An advance of ₹ 12,000 was paid in cash to Honest (P) Ltd. The balance of ₹ 48,000 was paid in cheque on performance. Similar contract entered with an outside Company would have costed the same to Notorius Ltd.

1. **The Directors contend that since the contract has been settled in cash at prevailing market prices, approval of the Board is not required u/s 297. Is the Directors' contention valid?**
2. **What would be your answer if Red, Lilac and Lavender were not Directors of Honest (P) Ltd but only its members?**
3. **Would your answer differ if the AMC was entered into with Honest Ltd**

b) With the knowledge of all the Directors of a Public Limited Company, a mortgage was created over the property of the Company in respect of a loan given by the brother of one of the Directors of the Company. But the Interested Director neither disclosed his interest nor abstained from voting at the Board Meeting, when the loan transaction was approved. Examine whether there is any ban on such contracts and whether nondisclosure of interest and voting by the Interested Director would make the contract void.

c) A meeting of members of Jashn Lights Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement.The meeting was attended by 200 Members holding 5,00,000 Shares. 70 Members holding 4,00,000 Shares in the aggregate voted for the Scheme. 120 members holding 90,000 Shares in aggregate voted against the Scheme. 10 Members holding 10,000 Shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 1956 whether the scheme was approved by the requisite majority.

Answer:

Case 1:

i) U/s 297, consent of the Board of Directors is required for entering into a contract with a Private Company in which the Director is a Director or Member. However, such consent is not required if the contract for purchase or sale of goods and materials are made for cash at prevailing market prices. [Sec. 297(2)(a)].
ii) In the given case, the contract is entered into with a Private Company in which the Directors of the Company are Directors. So, Sec.297 is applicable.
iii) Here, the contract entered into is a contract for "service". The exception from approval u/s 297(2)(a) is available only in respect of contract for purchase or sale of goods and materials and not for services.
iv) Hence, even if the payment is made in cash at prevailing market prices, the exception u/s 297(2)(a) is not available. Therefore, consent of the Board of Directors as stipulated u/s 297 is required. Otherwise the contract becomes voidable at the option of the Board.

Case 2:
i) Sec.297 is applicable for entering into a contract with a Private Company in which the Director is a Director or Member.
ii) Hence, even if the Directors of the Company are Members in the Private Company, the contract requires consent of the Board of Directors.

Case 3:
i) Sec. 297 is applicable for contracts entered into by the Company with inter alia, Private Company in which the Director is a Member or Director.

So, contract entered into with a Public Company in which the Company's Director is a Director or Member is not covered u/s 297. Hence, the consent of the Board is not required.

b)

1. Sec.299 requires the disclosure of interest by a Director while Sec.300 prohibits an Interested Director to participate or vote in Boards' proceedings. However, if the whole Board of Directors is already aware of the facts relating to an interest of a Director, a formal disclosure is not necessary.
2. Mere voting by an Interested Director will not render the contract void or voidable unless with the absence of that vote, there would have been no quorum. The mere fact that voting under such situation is an offence punishable with fine u/s 299 & 300, does not, ipso facto, render the contract void or voidable.
3. Conclusion: In this case, there is no allegation of earning secret profits. Thus the action of the Company will fail as the contract *for* mortgage is fair and in the interest of the Company.

c)

i) 1st Condition - 3/4 in Value: Shareholders holding 4,00,000 Shares representing more than 75% (4,00,000 Shares/ 4,90,000 Shares) approved the scheme. This condition is satisfied.
ii) 2nd Condition Majority in Number: Present & Voting = 190 Members. Majority thereof is 95 or more Members. Since only 70 Members have approved the scheme, this condition of "majority in number" is not satisfied.

Conclusion: Since both the conditions are not satisfied, the Scheme is not approved by a requisite majority

Question 12.

a) POST Machines Ltd entered into a contract with MOST Forgings, in which wife of P, a Director of the Company is a Partner. The contract is for supply of certain components by the firm for a period of 3 years w.e.f. 01.09.2012 on credit basis. The Paid-Up Share Capital was increased from ₹ 70 Lakhs to ₹ 140 Lakhs on 01.03.2013.

i) Explain the requirements under the Companies Act, 1956, which should have been complied with by POST Machines Ltd before entering into contract with MOST Forgings.
ii) Whether there is any additional requirement which is required to be complied with by POST Machines Ltd in view of the increased paid-up Share Capital on 01.03.2013?
iii) What would be your answer in case MOST Forgings is a Private Company in which P's wife is holding substantial shares?

b) The Issued, Subscribed and Paid Up Share Capital of Aseem Nidhi Company Ltd is ₹ 10 Lakhs consisting of 90,000 Equity Shares of ₹ 10 each fully paid up, and 10,000 Preference Shares of ₹ 10 each fully paid up. Out of the Members of the Company, 400 Members holding one Preference Share each and 50 Members holding 500 Equity Shares applied for relief u/s 397 & 398. As on the date of petition, the Company had 600 Equity Shareholders and 5,000 Preference Shareholders. Examine whether the above petition is maintainable. Will your answer be different, if Preference Shareholders have subsequently withdrawn their consent?

a) California Ltd is a Company controlled by 2 family groups. The first family group has four Directors, namely, A, B, C and D on the Board of Directors. The second family group has two representatives X and Y on the Board. Because of internal family troubles, the first group, by virtue of its majority Shareholding, removed both X and Y as the Directors of the Company. Aggrieved by this action, the second group is planning to move an application before the Tribunal. Advise as to the eligibility restrictions regarding filing the application and the chances of getting relief from the Tribunal, assuming that there is no other material on record in support of oppression of the minority group.

Answer:
a)

Aspect	Description
Contract for supply of components entered into between POST Ltd and MOST Forgings, a Partnership Firm	It attracts the provisions of Sec.297, 299, 300 and 301. 1. Sec.297: (a) The contract cannot be entered into unless it is approved in the meeting of the Board of Directors of the Company. Specific Board resolution is required in this regard. (b) However, in case of urgent necessity, such consent of the Board may be obtained within 3 months from the date on which the contract was entered into 2. Sec.299: Mr. P, the Interested Director, must disclose his interest at the Board meeting at which the question of entering into the contract has been taken up for consideration. 3. Sec.300: Mr. P should not take part in the discussion at the Board Meeting, and should not vote on resolution in respect of the contract. 4. Sec.301: Prescribed particulars of the contract must be entered into the Registrar of Contract maintained u/s 301 within 7 working days of the Board Meeting.
Subsequent increase in Paid Up Capital	1. In the given case, the contract was entered into on 01.09.2012 for supply of components for a period of 3 years. As the Paid-Up Share Capital was only ₹ 70 Lakhs on 01.09.2012 (less than ₹ 1 Crore) prior approval of the Central Government is not required.

	2. Subsequent increase beyond ₹ 1 Crore will not render it necessary to get the approval of the Central Government for continuation of the contract for the remaining period. Hence, there is no additional requirement.
In case of Private Company	1. If MOST Forgings is a Private Company, Sec.297 is not applicable as the Director of POST Ltd is not a Director or Member of MOST Forgings (P) Ltd. 2. Also u/s 299(6), a Director is not required to disclose his interest in any contract or arrangement entered into between 2 Companies if not more than 2% of the Paid Up Share Capital in the other Company is held by - (a) Any of the Directors of the Company, or (b) 2 or more of them together. 3. However, Sec. 299(6) should be read with Sec.299(I) which requires disclosure of Director's interest in a contract or arrangement entered or proposed to be entered into by or on behalf of the Company in which he is 'directly' or 'indirectly' interested. 4. In the given case, since Mr. P's wife holds substantial shares in the MOST Forgings (P) Ltd, Mr. P is "Indirectly Interested" in the contract and so, the provisions of Sec.299 are attracted. In such a case Sec.300 and 301 are also applicable.

b) Preference Shareholders are also "Members". In the above case, the Eligible Applicant(s) are least of the following -

i) Minimum Number of Members = 100 Members.

ii) Total Number of Members = 600 + 5,000 = 5,600. I/10th thereon = 560 Members.

iii) Total Issued Capital = ₹ 10,00,000. Value of Shares held by the Applicants = (500 Equity Shares x ₹ 10) + (400 Members x 1 Pref. Share x ₹ 10) = ₹ 90,000. (Min reqd = ₹ 1,00,000)

Conclusion: Since, the application has been made by 450 Members, least of the above (not less than 100 Members) condition is satisfied. Hence, the application is valid and maintainable. Subsequent withdrawal of consent does not affect the maintainability of the petition.

c)

X & Y will not succeed in the application against the Directors on the following grounds -

1. Appointment or removal of the Directors is the prerogative of the Shareholders. Tribunal cannot interfere on these issues.
2. Removal of Directors alone shall not result in oppression, unless there is any other material on record in support of oppression of the minority group.
3. The oppression should have been serious, to the extent of it being a fit cause for winding-up. In the present case, removal of Directors is not a just and fit case for winding up.
4. The acts complained of, must be an act of continuous nature. Isolated acts will not qualify for making an application u/s 397/398.

The oppression complained of must affect a person in his capacity as a Member. In the present case, removal from Directorship affects the person in his Managerial Capacity, and not as a

Member

Question 13.

a) Answer the following -

i) Whether the Companies being amalgamated must be Companies registered under the Companies Act, 1956?

ii) Whether the Companies seeking sanction of the court for a scheme of amalgamation must have specific power to amalgamate in the object clause of their Memorandum of Association?

b) 60% Shares of Indo-French Ltd are held by French Group and balance by an Indian Group. As per AOA 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 approached the Tribunal for action against the French Group for oppression. Based on these facts, decide the following issues:

i) Is the contention of oppression against the French Group by the Indian Group is tenable?

ii) What are the powers of the Tribunal in this regard?

c) X Ltd. is managed by Mr. Chirag as the MD. Serious allegations have been made by some shareholders and creditors of the company that the MD has misused his position and cost enormous loss to the company. The said Shareholders and Creditors of the Company make a complaint to the Central Government to intervene and provide relief to them. Their main prayer is that the MD should be removed from the post. Explain the powers of the Central Government in this regard.

Answer:

a)

Issue (i): Is Amalgamation only between Companies. Sec.394(4)(b) defines Transferor' and Transferee' Companies. While the Transferee' Company does not include any Company other than a Company within the meaning of the Companies Act, the Transferor Company includes any Body-Corporate, whether a Company within the meaning of the Companies Act, 1956 or not. "Body Corporate' includes a Company incorporated outside India [(Sec. 2(7)]. Hence, Transferor Company may be a Company incorporated outside India, but Transferee Company must be a Company incorporated under the Companies Act, 1956.

Issue (ii): Power in MOA: Usually the MOA of a Company contains in its Objects Clause, the power to amalgamate. But, in a number of cases (Refer above, and also in Aimco Pesticides Ltd, Feedback Reach Consultancy Pvt Ltd., Sir Matturdas Vissaiji Foundation in re), it has been held that it is not necessary to have in the MOA a specific power to amalgamate with another company. The provisions of Sec. 391/394 of the Companies Act, 1956 indicate the scope of the statutory power for amalgamating a Company with another Company despite the absence of any specific enabling provision in their memoranda. Hence even Companies not having specific power to amalgamate in their Memorandum can seek sanction of the Court for a scheme of amalgamation.

b)

i) Deadlock in Management: This is a situation where both Indian Group and French Group hold equal managerial powers, and almost equal Shareholding. As such, there is no minority and consequent oppression, but this is a case of deadlock in the Management.

ii) Deadlock is not Oppression: If two groups of Shareholders are equally strong, there is no case of one "oppressing" the other. Hence, deadlock in management does not amount to oppression.

iii) Deadlock does not lead to winding up: Mere deadlock in management is not a fit and proper case for winding-up. Powers conferred upon Tribunal against oppression and mismanagement cannot be invoked, [Gnanasambandam (CP) vs Tamilnadu Transports (Coimbatore) Pvt Ltd]

iv) Buy-out Order by Tribunal: In such cases, the Tribunal may order the Foreign Group to buy out the shares of Indian Group at a fair price with necessary permission. [Yashovardhan Saboo vs Groz Beckert Saboo Ltd] Alternatively, the Tribunal may also give an option to the Indian Group to buy the stocks of the Foreign Group.

v) Winding up: If both Groups fail to exercise their option to buy the Other Group, the Tribunal may order the Company to be wound up, under just & equitable grounds. [Kishan Lai Ahuja vs Suresh Kumar Ahuja]

c) On receipt of the complaint from some of the shareholders and creditors of X Ltd., that its managing director Mr. Chirag has misused his office and thereby caused loss to the company, the Central Government, if satisfied with the contents of the complaint may make a reference to the Tribunal with a request to inquire into the case and record a finding whether or not Mr. Chirag is a fit and proper person to hold the office of Managing Director. If the finding of the Tribunal is against the respondent, the Central Government, by order, shall remove him from office. The person against whom such an order is passed is debarred from holding the post of director etc., for a period of 5 years from the date of order of removal. Also no compensation is payable to him for termination of office.

Question 14.

a) Real Estates Ltd. was incorporated with the object of developing land for residential houses as well as purchase and sale of flats. It had, therefore, purchased 5 acres of land near the airport at Kolkata. But Government acquired the same for defence purposes. The company would not replace the land as the prices of land of other places are prohibitive. What will be the decision of the Court in the following cases:

(i) The Company suspends its business for a whole year?

(ii) The Company fails to resume its operation (business) for 5 years and the prospects seemed gloomy?

b) 'In the course of compulsory winding-up, the Court is empowered to summon persons suspected of having property of Company'. Explain.

c) RM Ltd went for a Public Issue of Equity Shares (₹ 10 Crores) of ₹ 10 each. The Shares were subscribed to an extent of 95% of the total issue. The Shares of the Company were accepted for listing by Bombay Stock Exchange but subsequently the permission was cancelled on certain grounds. On an appeal to the Central Government by the Company, the decision of the Stock Exchange was held to be valid. As a result, the application money had become refundable to the allottees. The Company, had no prospects of doing any business and there was a complete deadlock among the Directors. Looking at the circumstances, certain Creditors filed a petition in the Court for winding-up of the Company on the ground that the Company had become commercially insolvent. The Shareholders of the Company object to the petition of the Creditors. Decide giving reasons -

i) Will the objections of the Shareholders be sustainable?

ii) Can the Court dismiss the petition of Creditors for winding-up of the Company?

Answer:

a)

Issue i: The Court may refuse to grant winding-p order. Suspension of business for a whole year is a ground u/s 433(c) seeking winding-up by the court but the power of the Court in this regard is discretionary. The Court shall refuse winding-up on this ground if the intention of the company not to resume its business is absent. Thus, in the given case, winding-up order shall not be issued. **(Murlidhar v. Bengal Steamship Co. Ltd)**

Issue ii: Where the company fails to resume its operations for 5 years and prospects also seem gloomy, the Court may order the winding-up of the Company. **(Rupa Bharati Ltd vs Registrar of Companies).**

b) The following powers may be exercised by the Court –

Particulars	Description
1. To summon specified persons	Specified Persons **u/s 477**: The Court may summon before it - (a) any Officer of the Company, or (b) any person known or suspected to have in his possession any property or books or papers of the Company, or person known or suspected to be indebted to the Company, or (c) any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the Company. Such summons may be made at any time after - (i) the appointment of a Provisional Liquidator, or (ii) the making of a winding-up order.
2. To examine on oath	The Court may examine any specified person, on oath concerning the above matters - (a) by word of mouth (and thereafter reduce his answers to writing and require him to sign them), or (b) on written interrogatories.
3. To require production of books and papers	(a) The Court may require any specified person, to produce any books and papers in his custody or power relating to the Company. (b) Where he claims any lien on such books or papers, the production shall be without prejudice to that lien, and the Court shall determine all questions relating to that lien.
4. To apprehend persons in case of failure of appear	If any specified person, after being paid or tendered a reasonable sum for his expenses, fails to appear before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.
5. To order payment of debts due	If, on his examination, any specified person admits that he is indebted to the Company, the Court may order him to pay to the Liquidator, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.
6. To order delivery of	If, on his examination, any specified person admits that he has in his possession any property belonging to the Company, the Court may order

property	him to deliver to the Liquidator, that property or any part thereof.

c)

i) There is a commercial insolvency in the above case. Hence, the Creditors can make a petition u/s 433(e). Shareholders' contention is not sustainable.

ii) However, the Court has discretion in dealing with the winding-up petition, i.e. it may allow the petition or may dismiss the same. **[Jugalkishore Banarsidas vs South India Saw Mills P. Ltd]**

Question 15.

a) Master Ltd created a Floating Charge of its Current Assets in favour of a Bank to secure a Current Account, which was in debit of ₹ 5 Lakhs and also to secure further Working Capital facilities provided by the Bank.

The charge created on 1st January 2013 was duly registered with the ROC. The Bank advanced ₹ 10 Lakhs subsequent to the creation of charge. The Company has gone into voluntary liquidation pursuant to a resolution passed on 1st September 2013. Examine the validity of the floating charge in case it is a Creditors' Voluntary Winding-up, but there is no fraudulent preference. Would your answer be different, if it were a Members' Voluntary winding-up?

b) List the procedures to be followed for appointment of Directors in a Producer Co. u/s Sec. 581P

c) Jubilee Ltd was incorporated in London with a paid up capital of 10 million pounds. Mr. Y an Indian Citizen holds 25% of the Paid Up Capital. X Ltd, a Company registered in India holds 30% of the Paid Up Capital of Joel Ltd. Joel Ltd has recently established a Share Transfer Office at New Delhi. The Company seeks your advice as to what formalities it should observe as a Foreign Company. State briefly the requirements relating to filing of accounts with the ROC by the Foreign Company in respect of its global business as well as Indian business.

Answer:

1. Validity: The Floating Charge shall be valid upto the amount of any cash paid to the Company (either at the time of or after the creation of the charge), and in consideration for the charge, together with interest at 5% p.a. or at such other rate notified by Central Government.

2. Meaning of "in consideration for the charge": The words "in consideration for the charge" mean that the money was paid in consideration of the fact that a charge is created. Hence, it will be treated as if cash has been paid to the Company, in the following situations -

   i) Cash is paid to the Company simultaneously with the creation of the charge, or

   ii) Cash is paid a few days earlier to creation of the charge, in reliance upon a promise by the Company to create the charge, or

   iii) Cash is paid subsequently to the creation of the charge, and the circumstances clearly indicate that such cash would not have been paid to the Company, had the Company not given the security earlier by way of creation of the Floating Charge.

3. Analysis & Conclusion: In the above case, the Bank would not have advanced ₹ 10 Lakhs to the Company, had the Company not given the security earlier by way of creation of the Floating Charge. Hence, the charge is a valid charge to the extent of ₹ 10 Lakhs, along with interest at 5% p.a. or at such other rate notified by Central Government. The above facts are similar to Re. Yeovil Glove Co. Ltd case.

4. Members vs Creditors Voluntary Winding-up:

i) Provisions relating to Invalid Floating Charge (Sec.534) is applicable for every winding-up. So, the principles relating to Floating Charge are also applicable in case of a Members Voluntary Winding-up.

ii) In case of Members Voluntary Winding-up, the Declaration of Solvency would have been made. As the Company is solvent, the Floating Charge may be considered valid for the entire debt of ₹ 15 Lakhs including the pre-existing debt of ₹ 5 Lakhs (at the time of creation of charge).

b) The provisions relating to appointment of Directors are summarized below -

First Directors	• **Appointment by:** Subscribers to the Memorandum & Articles of Association. • **Term of Office:** First Directors hold office until Directors are elected u/s 581P. • **Number of First Directors:** Not less than 5.
Elected Directors	• **Time Limit:** Directors are to be elected within 90 days of registration of the Producer Company, i.e. in the first AGM. (However, the time limit is 365 days in case of ISCS converted into a Producer Company, if atleast 5 Directors including Directors continuing in office hold office as on the date of registration). • **Term of Office:** Not less than 1 year, but not exceeding 5 years as specified in AOA. • **Re-appointment:** Directors, who retire as per AOA, are eligible for re-appointment. • **Election in AGM:** Directors shall be elected or appointed by the Members in the AGM.
Additional Director and Expert Directors	• **Appointment:** The Board may co-opt one or more Expert Directors or an additional Director not exceeding I/5th of the total number of Directors or appoint any other person as Additional Director. • **Term of Office:** For such period as BOD may deem fit. However, the maximum period for which the Expert Directors / Additional Director holds office, shall not exceed the period specified in the Articles. • **Voting Rights:** Expert Directors shall not have the right to vote in the election of the Chairman, but shall be eligible to be elected as Chairman, if so provided by its Articles.

c) The following issues are relevant in this regard –

1. **Indian Citizens / Bodies holding 50% Share Capital in Foreign Company:**

(a) Where not less than 50% of the Paid-Up Share Capital (Equity **or** Preference or partly in both), of a Foreign Company is held by one or more - (a) citizens of India, **and** / **or** (b) Bodies Corporate incorporated in India, whether singly or in the aggregate, such Company shall comply with such of the provisions the Act **with regard to the business carried on by it in India,** as if it were a Company incorporated in India.

(b) In the above case, Joel Ltd is a Company where 55% of the Paid Up Capital is held in the above manner. Hence, it has to comply with the provisions the Act **with regard to the business carried on by it in India,** as if it were a Company incorporated in India.

2. **Obligations of a Foreign Company for Global Business Accounts:**

(a) Every Foreign Company shall, in every calendar year, make out a Balance Sheet and Profit and Loss account. The form, annexures, attachments (including, relating to every

Subsidiary) of such Balance Sheet and P & L a/c shall as if it had been a Company within the meaning of the Act, have been required to make out and lay before in General Meeting.

(b) The Central Government is empowered to exempt / modify the above requirements in respect of any foreign company or class of foreign companies, by notification in the official gazette.

3. **Filing with ROC:**

The following shall be delivered, filed with ROC, in 3 copies-

(a) Balance Sheet and P & L a/c along with its annexures and attachments, as submitted by it to the prescribed authority in the country of its incorporation. [If such document is not in English language, a certified translation thereof shall be annexed to it.]

(b) List of all places of business established by the company in India as at the date of Balance Sheet.

4. **Indian and Global Business Accounts:**

(a) In respect of Indian business, a foreign company shall file 3 copies of its Balance Sheet and P & L A/c, prepared in Indian Rupees, as per Schedule VI requirements

(b) Indian Business accounts shall be audited by a Chartered Accountant practicing in India.

Question 16.

a) Southern India Sugar Producer Company Limited, having Paid-Up Capital of ₹ 5 Lakhs and Free Reserves of ₹ 3 Lakhs, propose to make the following Loans and Investments –

i) Loan of ₹ 2 Lakh to Mr. Ram, a member of the Company, for a period of one year and a loan of ₹ 1 Lakh to Mr. Shekhar, a Director of the Company for a period of six months.

ii) Investments of ₹ 3 Lakhs in the Equity Shares of XYZ Marketing Limited.

State the restrictions, if any, in this regard and also the legal requirements to be complied with by the Company under the provisions of the Companies Act, 1956

b) Explain the powers of Central Government / Tribunal to accord approvals and prescribe fees for applications u/s Sec.637A

c) AOA of a Company provide for a maximum of 11 Directors. At present there are 11 Directors holding position. The AOA have been amended to increase the maximum number of Directors to 13 for appointing X and Y as Additional Directors. Whether approval of the Central Government is required? What in case the AOA does not provides for a Maximum Limit.

Answer:

a)

Issue i:

- Subject to the provisions in AOA, the Board may grant Loans and Advances to any Member, against security specified in Articles, repayable within a period exceeding 3 months but not exceeding 7 years from the date of disbursement of Loan or Advances.
- Before sanction of any loan to the Director of the Company or any of the relative of the Director, the BOD has to convene an EGM and obtain the approval of the Members.

Issue ii: U/s 581ZL(3), Investment by a Producer Company in a Company other than a Non - Producer Company, is restricted to a Maximum of 30% of the Aggregate of Paid Up Capital &

Free Reserves. (₹ 5 Lakhs + ₹ 3 Lakhs = ₹ 8 Lakhs x 30% = ₹ 2.40 Lakhs). Since Actual Amount of Investment is ₹ 3 Lakhs, such an investment is not valid one.

b)

1. Situation	Where Central Govt / Tribunal is required or authorised by any provision of the Act - (a) to accord approval, sanction, consent, confirmation or recognition for any matter, (b) to give any direction in relation to any matter, or (c) to grant any exemption in relation to any matter,
2. Power of Central Govt / Tribunal	• In the absence of anything to the contrary contained in the Act, the Central Government / Tribunal may accord, give or grant such approval, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose. • In case of contravention of any such condition, limitation or restriction, the Central Govt / Tribunal may rescind or withdraw such approval, direction or exemption.
3. Fees for application	Save as otherwise expressly provided in the Act, every application which may be, or is required to be, made to the Central Government / Tribunal, in respect of the following, shall be accompanied by such fee as may be prescribed, for - (a) any approval, sanction, consent, confirmation or recognition to be accorded by that Government / Tribunal to, or in relation to, any matter, or (b) any direction or exemption to be given or granted by that Government / Tribunal in relation to any matter, or (c) in respect of any other matter, It is to be noted that different Fees may be prescribed for applications in respect of different matters or in case of applications by Companies, for applications by different classes of Companies.

c) Sec.260 provides for appointment of Additional Director, wherein it provides notwithstanding anything contained in Sec.259, the Board shall have a right to appoint Additional Director. Hence, generally the approval of Central Government is not required for increase in number of Directors due to appointment of Additional Directors. But the total number of Directors including Additional Directors should not exceed the maximum number of Directors as stated in the AOA.

If AOA provides for Maximum Limit on Directors: The Company shall amend its AOA and increase the number of Directors to 13. Hence, Sec.259 applies and Central Government approval is required, since increasing the position / seats gives the right to board to appoint any Director, not necessarily Additional Directors. If the Company has already appointed the maximum number of Directors as fixed by AOA, the Board cannot exercise its power to appoint Additional Directors since the maximum cannot be exceeded except in accordance with Sec.259. Hence, Central Government approval is required.

If AOA does not provide for maximum limit: Alteration to AOA is not required. Increase in number of Directors to 13 from 11 due to appointment of Additional Director does not attracts Sec.259 hence, Central Govt approval not required.

Question 17.

a) The paid-up Share Capital of AVIK Private Limited is ₹ 1 crore, consisting of 8 lacs Equity Shares of ₹10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. ASHA Private Limited and AMIT Private Limited are holding 3 lacs Equity Shares and 1,50,000 Equity Shares respectively in AVIK Private Limited. ASHA Private Limited and AMIT Private Limited are the subsidiaries of ANAND Private Limited.
With reference to the provisions of the Companies Act, 1956, examines whether AVIK Private Limited is a subsidiary of ANAND Private Limited? Would your answer be different if ANAND Private Limited has 8 out of total 10 directors on the Board of Directors of AVIK Private Limited?

b) A company was started with the object of building 'A mall with shops'. The building was destroyed by fire and the company wanted to alter the objects clause in the memorandum by substituting the words 'A mall with shops' with the words "Shops, Residential buildings and Warehouses for letting purposes.' Will this alteration of the memorandum for the purpose be permissible? Decide referring to the provisions of the companies Act, 1956.

c) The object clause of the Memorandum of Association of LSR Private Ltd, Lucknow authorized it 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.

Answer:

a)

1. For the purpose of determining whether a company is subsidiary of another company, only equity shares issued by the first mentioned company are to be taken into account.
2. Any shares held by a subsidiary company shall be treated as held by its holding company
3. If a company by itself or along with its subsidiaries holds more than half in nominal value of the equity shares capital of another company, it will be considered as the holding company of the other company

In this case, the equity share capital of AVIK Pvt. Ltd. is ₹ 80,00,000 consisting of 8,00,000 equity shares of ₹ 10 each fully paid up ASHA and AMIT Pvt. Ltd. are holding 4,50,000 (3,00,000 + 1,50,000) equity shares in AVIK Pvt. Ltd., ANAND Pvt. Ltd will be treated as holding more than half in nominal value of the equity share capital of AVIK Pvt. Ltd.

If ANAND Pvt. Ltd. controls the composition of the Board of Directors of AVIK Pvt. Ltd; it will also be treated as holding company by virtue of section 4(1)(a). Hence the answer will not be different.

b) Section 17(1) of the Companies Act, 1956, permits a company to alter its objects in the memorandum to carry on some business which under the existing circumstances may conveniently or advantageously be combined with the existing business.

Thus, in the given problem the new object of "shops, residential buildings and warehouses for letting purposes" can be conveniently and advantageously combined with the existing object of building a "mall with shops" which is obviously for letting purposes. Accordingly, alteration is permissible.

c) Any acts beyond the powers of a company are ultra vires and void and cannot be ratified even by the entire members of the company M/s LSR Pvt. Ltd is authorised to trade directly on fruits and vegetables. It has no power to enter into a partnership for Iron and steel with Mr. J. as such. Mr. J who entered into partnership is deemed to be aware of the lack of powers of M/s LSR (Pvt.) Ltd. In the light of the above, Mr. J cannot enforce the agreement or liability against M/s LSR Pvt. Ltd.

Question 18.

a) Enlist the documents that are required to be kept by Banks with respect to nature of transactions.

b) Mr. Raghu is a Director of Fraudulent Ltd., Honest Ltd. and Regular Ltd. For the financial year ended on 31st March, 2008 two irregularities were discovered against Fraudulent Ltd. Fraudulent Ltd. did not file its annual accounts for the year ended 31.3.2008 and failed to pay interest on loans taken from a financial institution for the last three years.
On 1st June, 2009 Mr. Raghu is proposed to be appointed as additional director of Goodwill Ltd., which company has sought a declaration from Mr. Raghu and he also submitted the declaration stating that the disqualification specified in Section 274 of the Companies Act, 1956 is not attracted in his case. Decide under the provisions of the Companies Act:
(i) Whether the declaration submitted by Mr. Raghu to Goodwill Ltd. is in order?
(ii) Whether Mr. Raghu can continue as a Director in Honest Ltd. and Regular Ltd.?

c) State the transactions for which SARFAESI Act, 2002 does not apply?

Answer:

a) Every Banking Company or Financial Institution or Intermediary, as the case may be, shall maintain a record of all transactions including the record of -

Nature:
Cash Transactions

Conditions:
i) Value of more than ₹ 10 Lakhs or its equivalent in Foreign Currency (including receipts by NPO)
ii) Value below ₹ 10 Lakhs or its equivalent in Foreign Currency where such series of transactions have taken place within a month and are integrally connected to each other,
iii) Transactions were forged or counterfeit currency notes or bank notes have been used as genuine and where any forgery of a valuable security or a document has taken place.

Nature:
Suspicious Transactions

Conditions:
All Suspicious Transactions whether or not made in cash and by way of -
(i) Deposits and credits, withdrawals into or from any accounts in whatsoever name they are referred to in any currency maintained by way of -
- Cheques including Third Party Cheques, Pay Orders, Demand Drafts, Cashier's Cheques or any other instrument of payment of money including electronic receipts or credits and electronic payments or debits, or
- Travellers Cheques, or
- Transfer from one account within the same banking company, financial institution and intermediary, as the case may be, including from or to Nostra and Vostro accounts, or

any other mode in whatsoever name it is referred to.

(ii) Credits or debits into or from any non-monetary accounts such as Demat Account, Security Account in any currency maintained by the Banking Company, Financial Institution and Intermediary.

(iii) Money Transfer or Remittances in favour of Own Clients or Non-Clients from India or abroad and to third party beneficiaries in India or abroad including transactions on its own account in any currency by any of the following -

- Payment Orders, or
- Cashiers Cheques, or
- Demand Drafts, or
- Telegraphic or Wire Transfers or Electronic Remittances or Transfers, or
- Internet Transfers, or
- Automated Clearing House Remittances, or
- Lock box driven transfers or remittances, or
- Remittances for credit or loading to electronic cards, or
- Any other mode of money transfer by whatsoever name it is called.

(iv) Loans & Advances including Credit or Loan Substitutes, Investments and Contingent Liability by way of -

- Subscription to Debt Instruments such as Commercial Paper, Certificate of Deposits, Preferential Shares, Debentures, Securitized Participation, Inter Bank Participation or any other Investments in Securities or the like in whatever form and name it is referred to, or
- Purchase and Negotiation of Bills, Cheques and other Instruments, or
- Foreign Exchange Contracts, Currency, Interest Rate and Commodity and any other Derivative Instrument in whatsoever name it is called, or
- Letters of Credit, Standby Letters of Credit, Guarantees, Comfort Letters, Solvency Certificates and any other instrument for settlement and/or credit support.

(v) Collection Services in any currency by way of collection of Bills, Cheques, Instruments or any other mode of collection in whatsoever name it is referred to.

b) Failure to file the annual accounts does not result in disqualification u/s 274(l)(g):

- since Fraudulent Ltd. has not defaulted in filing of annual returns
- since failure to file the annual accounts has not been for 3 consecutive financial years.

Failure to pay interest on loans taken from a financial institution for last three years does not result in disqualification u/s 274(1)(g)- since the disqualification is incurred only if the default relates to payment of 'public deposits' or interest on deposits, and not for nonpayment of 'loans' obtained from any financial institution.

i) The declaration submitted by Mr. Raghu is in order and valid since Mr. Raghu is not disqualified u/s 274(1)(g).

ii) Mr. Raghu can continue as a Director in Honest Ltd. and Regular Ltd. Since the disqualification u/s 274(1)(g) does not result in vacation of office.

c)

The provisions of SARFESI Act, 2002 shall not apply to the following transactions as per section 31 of the said Act.

i) A lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force,

ii) A pledge of movables within the meaning of Sec. 172 of the Indian Contract Act, 1872,

iii) Creation of any security in any aircraft as defined u/s 2(1) of the Aircraft Act, 1934,

iv) Creation of security interest in any vessel as defined u/s 3(55) of the Merchant Shipping Act,

1958,

v) Any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created,
vi) Any rights of Unpaid Seller u/s 47 of the Sale of Goods Act, 1930,
vii) Any properties not liable to attachment or sale u/s 60(1) First Proviso of Code of Civil Procedure, 1908.
viii) Any security interest for securing repayment of any financial asset not exceeding ₹ 1,00,000,
ix) Any security interest created in agricultural land,
x) Any case in which the amount due is less than 20% of the principal amount and interest thereon.

Question 19.

a) Poly Ltd., manufacturer and seller of footwear entered into an agreement with City Traders for the sale of its products. The agreement includes, among others, the following clauses:

(i) That the Purchaser shall not deal with goods, products, articles, by whatever name called, manufactured by any person other than the Seller.

(ii) That the Purchaser shall not sell the goods manufactured by the Seller outside the municipal limits of the city of Secunderabad.

(iii) That the Purchaser shall sell the goods manufactured by the Seller at the price as embossed on the price label of the footwear.

However, the purchaser is allowed to sale the footwear at prices lower than those embossed on the price label.

You are required to examine with relevant provisions of the Competition Act 2002, the validity of the above clauses. Section 3(1) prohibits entering into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Any such agreement, if made, shall be void.

b) 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 leveled 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.

c) What are the documents required for obtaining registration for insurers?

Answer:

a)

(i) The given clause is:

- since it falls under 'exclusive supply agreement'
- provided it causes or is likely to cause an appreciable adverse effect on competition [Sec. 3(1) read with Sec. 3(4)].

(ii) The given clause is prohibited:

- since it falls under' exclusive distribution agreement'
- provided it causes or is likely to cause an appreciable adverse effect on competition [Sec. 3(1) read with Sec. 3(4)].

(iii) The given clause is valid:

since it does not fall under the clause 'resale price maintenance' (as it clearly states that the prices lower than the price stipulated by the Seller can be charged) [Sec. 3(1) read with Sec. 3(4)].

b) Commission is empowered 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 or proceeding before it (Sec. 36).

Contention of the respondent is not correct:

Since the Commission has the power to call upon the services of experts from any discipline including the pharmaceutical sector.

c) Documents required for obtaining registration:

Every application for registration shall be made in such manner as may be determined by regulations made by the Authority and shall be accompanied by -

i) A certified copy of the memorandum and articles of association, where the applicant is a company, or in the case of any other insurer, a certified copy of the deed of partnership;

ii) The name, address and the occupation, if any, of the directors where the insurer is a company;

iii) A statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by Sec. 7 or Sec. 98 before application for registration is made has been deposited together with a certificate from RBI showing the amount deposited;

iv) Where the provisions of Sec. 6 or Sec. 97 apply, a declaration verified by an affidavit made by the principal officer of the insurer authorised in that behalf that the provisions of those sections as to paid up equity capital or working capital have been complied with;

v) A certified copy of the published prospectus, if any, and of the standard policy forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an actuary that such rates, advantages, terms and conditions are workable and sound:

vi) The receipt showing payment of fee as may be determined by regulations which shall not exceed ₹ 50,000 for each class of business as may be specified by regulations made by the Authority;

vii) Such other documents as may be specified by regulations made by me Authority.

Question 20.

a) State the duties, powers and functions of IRDA.

b) State the powers of RBI to control advances by Banking Companies.

Answer:

a) Duties of the IRDA [Sec. 14(1)]

Subject to the provisions of this Act and any other law for the time being in force, the IRDA shall have the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.

Powers and functions of the IRDA [Sec. 14(2)]

- Without prejudice to the generality of the provisions contained in sub-section (1),

- the powers and functions of the IRDA shall include,—
  (a) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;
  (b) 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;
  (c) specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;
  (d) specifying the code of conduct for surveyors and loss assessors;
  (e) promoting efficiency in the conduct of insurance business;
  (f) levying fees and other charges for carrying out the purposes of this Act;
  (g) 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;
  (h) 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;
  (i) regulating investment of funds by insurance companies;
  (j) regulating maintenance of margin of solvency;
  (k) adjudication of disputes between insurers and intermediaries of insurance intermediaries;
  (l) supervising the functioning of the Tariff Advisory Committee
  (m) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and
  (n) exercising such other powers as may be prescribed.

b) Power Of RBI To Control Advances By Banking Companies (Sec. 21)

i) Formulation of policy by RBI in relation to advances [Sec. 21(1)]

Where RBI is satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

ii) Directions by RBI to baking companies [Sec. 21(2)]

Without prejudice to the generality of the power vested in RBI u/s 21(1), RBI may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to -

  (a) the purposes for which advances may or may not be made;
  (b) the margins to be maintained in respect of secured advances;
  (c) the maximum amount of advances or other financial accommodation which may be made by that banking company to any one company, firm, association to persons or individual;
  (d) the maximum amount up to which guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual; and
  (e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.

iii) Binding effect of directions of RBI [Sec. 21(3)]

Every banking company shall be bound to comply with any directions given to it under this section.

Question 21.

a) An Unlisted Company, having paid-up Share Capital of ₹ 3 Crores, consisting of 30,00,000 Equity Shares of ₹ 10 each fully paid-up, proposes to make an IPO of 90,00,000 Equity Shares of ₹10 each at a premium of ₹ 5 per Share, in July 2013. The Promoters acquired 10,00,000 Equity Shares on 1st January 2009 and another 10,00,000 Equity Shares on 1st January 2013 at Face Value. Required -

i) What is the Minimum Contribution that should be made by the Promoters of the above Company, in order to comply with SEBI Regulations?

ii) State the period for which the Promoters are required to lock-in the amount in excess of the required minimum contribution.

b) AVD limited was incorporated on 1st April 2006. The Company got its Shares listed at Bombay Stock Exchange on 30th September 2011. The Company at an Extra-Ordinary General Meeting held on 31st October 2013, decided to go for public issue of Equity Shares to an extent of ₹ 300 Crores. The Net Worth of the Company as per the audited Balance Sheet in the financial years 2011-12 and 2012-13 was ₹ 50 Crores and ₹ 60 Crores respectively. During the financial year 2012-13 the Company had already issued Equity Shares amounting to ₹ 20 Crores. There is no change in the name of the Company or its business activities during the financial year 2012-13. Referring to the guidelines issued by SEBI advice the Company on the following -

1. Whether the Company can go ahead with the public issue of Equity Shares as stated above?

2. What would be your advice in case the Net Worth of the Company as per audited Balance Sheet in the Financial Year 2011-12 and 2012-13 was ₹ 20 Crores and ₹ 30 Crores respectively?

3. What would be the position in case the Company in question changed its name to AJD Ltd during the year 2012-13, 3 months before filing the offer document and the revenue due to change of business activity suggested by the new name during the financial year 2012-13 was 40% less than the total revenue for the financial year 2011-12 reckoned from the date of filing the offer document?

c) Following information is available from the records of Twinkle Gums and Woods Ltd -

i) The Company is a closely-held Unlisted Company.

ii) The Paid Up Share Capital of the Company since 1st April 2006 is ₹ 3 Crores and its Net Worth as at 31st March 2013 was ₹ 5 Crores, as per audited Balance Sheet.

iii) The Net Tangible Assets of the Company as per last 3 audited Balance Sheets as at 31st March 2011, 2012 and 2013 were ₹ 4 Crores, ₹ 4.50 Crores and ₹ 5 Crores, out of which monetary assets were less than ₹ 50 Lakhs, in each of the three years.

iv) The Company was incorporated in 2003 and commenced its business on 1st April 2003 and since then, it has earned good profits and it has not incurred any losses in any year in the past.

v) The Company has not declared any dividend so far, but according to the profits earned so far, the management could have declared dividend in each of the past 5 years.

vi) The name of the Company was changed from Twinkle Woods Ltd to its present name w.e.f 1st Oct 2012.

vii) The Company wants to make a public issue of shares to raise ₹ 20 Crores by issuing Equity Shares at a premium. For the purpose of including information in the Prospectus, the Company has prepared its accounts for 12 months ended 30th September 2013 showing segment-wise revenue, which reveals that revenue from Chemical Segment is more than the revenue from the Woods Segment.

State the relevant SEBI Guidelines and explain whether the Company can make the desired public issue, on the basis of the above facts.

Answer:

a)

i) Post-Issue Capital = ₹ 3 Crores + ₹ 9 Crores = ₹12 Crores. So, Minimum Promoters' Contribution = 20% of ₹ 12 Crores = ₹ 2.40 Crores, i.e. 24,00,000 Shares of ₹ 10 each.
Presently the Promoters hold 20,00,000 Shares, out of which 10,00,000 Shares are acquired from 1st Jan 2009 onwards, at face value (whereas the IPO is made a premium of ₹ 5 per Share). Hence, these 10,00,000 Shares are not eligible to be included in Promoters' Contribution.

However, if the Promoters bring in the difference i.e. ₹ 5 x 10 Lakh Shares = ₹ 50 Lakhs these Shares will also be eligible for inclusion in Promoters' Contribution.
The Promoters have to subscribe for a further 4 Lakh Shares, and bring in the full amount of the Promoters' Contribution, including premium thereon, (₹15 x 4 Lakh Shares = ₹ 60 Lakhs) atleast one day prior to the issue opening date.

ii) **Lock-In:** For Minimum Promoter Contribution - 3 Years. For excess contribution over Minimum Contribution - 1 Year.

b) During Financial Year 2013-14, the Company is eligible to issue a maximum of 5 times of its pre-issue Net Worth, i.e., ₹ 60 Crores x 5 times = ₹ 300 Crores. Issue amount of previous year 2012-13 is not relevant.

If the Net Worth during the Financial Year 2012-13 was ₹ 30 Crores, the Company is eligible to issue ₹ 30 x 5 = ₹ 150 Crores only through public issue.

Otherwise the Company should comply with the alternative conditions given below:

i) Issuer shall make issue through Book-Building Process, and
ii) Atleast 75% of Issue Size shall be allotted to the QIB Falling which the full subscription monies shall be refunded.

c) The required conditions and their fulfillment are stated below.

Net Tangible Assets of at least ₹ 3 Crores in each of the preceding 3 full years (of 12 months each), of which 1 not more than 50% is held in monetary assets.
Net Tangible Assets > ₹ 3 Crores in each of the 3 years. The condition relating to monetary assets is also satisfied.

Track record of Distributable Profits for at least 3 out of immediately preceding 5 years
Company has earned profits since its inception. Hence, this condition is also satisfied.

Net Worth of atleast ₹ 1 Crore in each of the preceding 3 full years
Paid Up Capital is ₹ 3 Crores and there are no Losses. Net Worth as per recent audited B/S is ₹ 5 Crores. Hence, this condition is satisfied.

Where the Company has changed its name within the last one year, at least 50% of the revenue for the preceding 1 full year is earned by the Company from the activity suggested by the new name.
Revenue from Chemical Segment (new name) is more than revenue from Woods Segment (old name). Hence, this condition is also met.

Aggregate of the proposed issue and all previous issues made in the same financial year in terms of size (i.e. offer through Offer Document + Firm Allotment + Promoters Contribution through the Offer Document), does not exceed 5 times its Pre-Issue Net Worth as per the audited Balance Sheet of the last financial year.

Pre-Issue Net Worth = ₹ 5 Crores. Hence, permissible maximum issue size = ₹ 5 Crores x 5 = ₹ 25 Crores. Since the proposed issue size is only ₹ 20 Crores, this condition is also satisfied.

Conclusion: Since the Company satisfies all the basic conditions, it can proceed with the Public Issue, in accordance with SEBI Regulations.

Question 22.

a) Following information and figures are noticed from the annual accounts for the year ended 31st March 2013 of MANI Ltd, a Listed Company -

- **Authorised Share Capital ₹ 10 Crores comprising of 1 Crore Equity Shares of ₹ 10 each.**
- **Paid-Up Share Capital of ₹ 4.5 Crores comprising of 40,00,000 Equity Shares of ₹ 10 each fully paid-up and 10,00,000 Equity Share of ₹ 10 each called and paid-up to ₹ 5 each. The Total Paid-Up Capital is paid up in cash.**
- **Securities Premium Account ₹ 10 Crores.**
- **2,50,000 Fully Convertible Debentures of ₹ 100 each. These Debentures are due for conversion on 30th June 2014 in full into fully paid Equity Shares of ₹ 10 each in the ratio of 2 Equity Shares for one Debenture.**
- **General Reserve ₹ 15 Crores.**
- **Fixed Asset Revaluation Reserves ₹ 2.5 Crores. It was further ascertained that the partly paid Shares were made fully paid by 30th April 2013.**
- **Outstanding Liabilities in respect of Bonus to Employees and Workers ₹ 25 Lakhs.**
- **Outstanding Liabilities in respect of Interest Payable on Public Deposits comprising of Fixed Deposits from general public ₹ 15 Lakhs.**

The Directors of MANI Ltd propose to issue Bonus Shares in the ratio of 1:1.

i) Advice the Directors on the matter with reference to the guidelines issued by SEBI on Bonus Issue.

ii) What will be your advice, if the following other information is gathered from the books of account and other records of the said Company for the period upto 31st December 2012.

- **Bonus to Employees and Workers was paid on 15th April 2013.**
- **Interest on Public Deposits was outstanding as on 31st March 2013.**

b) The Board of Director of VDV Ltd, a Banking Company incorporated in India, for the accounting year ended 31-3-2013 transferred 15% of its Net Profit to its Reserve Fund. Certain Shareholders of the Company objects to the above act of the Board of Directors on the ground that it is violative. Examine the provision of Banking Regulation Act, 1949 and decide -

i) Is the contention of the Shareholders tenable?

ii) Would your answer be still the same in case the Board transfers 30% of the Company's Net Profits to Reserve Fund?

c) Mr. Fakir 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?

Answer:

a) The analysis in the case of MANI Ltd is as under -

i) Whether Increase in Authorised Capital is required?

Particulars	₹ Crores

Paid up Share Capital as on 31st March 2013	4.5
Add: Additional Paid up Capital by making Partly Paid Shares fully paid up (10 Lakh Shares at ₹ 5)	0.5
Add: Paid up Capital after conversion of 2.5 Lakh FCDs into 5 Lakh Equity Shares of ₹ 10 each	0.5
Add: Total of above	5.5
Proposed Bonus Issue at 1 Share for every Share held	5.5
Post Bonus Issue Capital	11.0
Less: Authorised Share Capital	(10.0)
Increase in Authorised Share Capital required	1.0

MANI Ltd should increase its Authorized Share Capital by passing a Resolution in its General Meeting.

ii) Whether Company has Reserves to source the Bonus Issue?

Particulars	₹ Crores
General Reserve - Being Free Reserves accumulated out of Genuine Profits	15
Securities Premium - Assuming fully realized, i.e. collected in cash	10
Fixed Asset Revaluation - Reserves created by FA revaluation cannot be used for Bonus Issue	Nil
Total	25

MANI Ltd has sufficient Reserves to issue Bonus Shares.

iii) Effect of Interest Default: If, on the date of proposed issue of Bonus Shares, MANI Ltd has defaulted in payment of Interest on Deposits, MANI Ltd cannot make a Bonus Issue, until such interest obligations are fully met.
It is to be noted that, there is no default as to payment of statutory dues of the employees in the above case.

b)

1. **Creation**: Every Banking Company incorporated in India shall create a Reserve Fund.
2. **Transfer:** Not less than 20% of profits as disclosed in the Profit & Loss A/c before any dividend is declared, shall be transferred to Reserve Fund every year.
3. **Exemption:** Based on RBI's recommendation, the Central Government may grant exemption to a Banking Company from the requirement of Sec.17 for a specified period. However, the exemption will be granted only if -

(a) Having regard to the adequacy of the Paid up Capital and Reserves of Banking Company in relation to its Deposit Liabilities, the Central Govt. is satisfied that the exemption can be granted, and

(b) Aggregate of Amount of Reserve Fund and Share Premium A/c is not less than Paid up Capital of the Banking Company.

4. **Appropriation:**

(a) Where a Banking Company appropriates any sum from the Reserve Fund or Share Premium A/c, it shall report the fact to RBI explaining the circumstances relating to appropriation within 21 days from the date of appropriation.

(b) RBI may, at its discretion, extend the period beyond 21 days or condone the delay.

Case (i) : Minimum Amount to be transferred to the Reserve Fund is 20% of Profits. So,'the objection made by the Shareholders is valid. However, the action of the Board shall be valid if

the Banking Company has obtained in writing, an order of the Central Government, waiving compliance with the requirements of transfer to the Reserve Fund.

Case (ii) : In case the Board has transferred to the Reserves 30% of Net Profits, it is valid since the requirement of transfer to Reserves (20% of Profits) is the minimum requirement given under the Act. The Board is free to transfer to Reserve, anything over and above 20% of Net Profits.

c) A person accused of an offence punishable for a term of imprisonment of more than 3 years under Part A of the Schedule 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.

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.

It is to be noted that the limitation on granting bail specified above is in addition to the limitations under Code of Criminal Procedure, 1973 or any law for the time being in force.

Section – B

Question 23.

a) 'Approaches towards Ethical Standards'. Discuss.

b) A good corporate citizen should follow the principles of sustainable development. Discuss.

Answer:

a)

1. The Utilitarian approach
   - This approach takes into account the consequences of an action in determining as to whether such action is ethical or not.
   - This approach suggests that an ethical action is one which has the maximum utility, i.e. which maximises the good and minimizes the harm. Thus, an ethical action is one which produces the greatest good and does the least harm to all those who are affected by it. (e.g. shareholders, workers, customers, local community).

2. The Rights approach
   - This approach suggests that an ethical action is one which respects and protects the rights of all those who are affected by such action.
   - Every individual has a right to decide as to what way he wants to lead his life, right to know the truth, right to privacy, right not to be injured etc. An ethical action is one which protects his rights.

3. The Fairness or Justice approach	• This approach suggests that an ethical action is one which treats all equals equally, i.e. no discrimination and no differential treatment. • Since all human beings are equal, applying this principle, all human beings should be treated equally. • However, some humans may be treated unequally, but in that case the treatment should be fair based on some valid standard.
4. The Common Good approach	• This approach suggests that an ethical action is one which results in common good, i.e. welfare of others. • If an action improves the life of others, it is ethical.
5. The Virtue approach	• This approach suggests that an ethical action is one which is consistent with certain virtues that are responsible for the development of the humanity. • These virtues include values like honesty, fairness, generosity, tolerance, love, self- control etc.

b) Corporate Social Responsibility is closely linked with the principles of sustainable development. Hence to be a good corporate citizen the principles of sustainable development should be followed.

- World Business Council for Sustainable Development defines Corporate Social Responsibility as follows:
- "Corporate social responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large."
- CSR advocates moving away from a 'shareholder alone' focus to a 'multi-stakeholder' focus.
- Sustainable Development is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.
- A business organisation which employs eco-friendly business practices is, no doubt, socially responsible as it takes into account the interest of its stakeholders, viz. the environment and the society at large. As a corollary, a business organisation which is socially responsible would, no doubt, employ eco-friendly business practices.
- A business organisation which is socially responsible would adopt the principles of sustainable development (viz. environment protection, employing eco-friendly business practices, energy conservation, waste reduction and waste management, pollution prevention, using renewable sources of energy).
- Thus, it is correct to say that "Corporate Social Responsibility is closely linked with the principles of sustainable development".

Question 24.

a) Explain the features of Good Corporate Governance.

b) "Firms which are sensitive to society's needs would survive in the long run'. Discuss with reference to Corporate Social Responsibility.

Answer:

a) The features of Good Corporate Governance can be enumerated as follows

1. Participation	All the stakeholders must be given an opportunity to participate. The participation may be either direct or through legitimate representatives.
2. Equity and inclusiveness	All the stakeholders should have an opportunity to express their concerns in the business decisions.

3. Consensus oriented	The management should consider and analyse the concerns of all the stakeholders, and then take such decisions as are in the best interests of all of them.
4. Responsiveness	The management should address the concerns of all the stakeholders.
5. Accountability	The management should develop effective checks and controls so as to prevent any possible abuse of power.
6. Transparency	The governance should be such that the investors and other stakeholders get a true picture of entity's financial and non-financial aspects.
7. Follows the rule of law	The decisions taken and their implementation should be in total compliance with the laws, rules and regulations.
8. Effectiveness and efficiency	The governance should enable the organisation to achieve its goals and meet the needs of the society as well.

b) In today's competitive business world being a good corporate citizen and being sensitive to the needs of the society has become of utmost importance. It has gained so much of importance in the past few years that it has become one of the important points for survival in the long run.

- Society gives business the licence to exist which may be revoked or amended at anytime if the business fails to fulfil the expectations of the society. Thus, in order to retain its powers, a business organisation should fulfil its social responsibility.
- The iron law states that 'in the long run, those who do not use power in a manner which society considers responsible will tend to lose it'.
- The implication of the 'iron rule' is that the business organisations must recognize that avoiding social responsibility would lead to the gradual erosion of power.
- Thus, the given statement is incorrect.

Question 25.

Discuss about the following reports in relation to corporate governance.

a) Combined code, 2008
b) Revised Smith Guidance, 2008
c) Higgs, 2003

Answer:

a) Combined code, 2008:

The findings of the Financial Reporting Council (FRC) Review of the Impact of the Combined Code were published in December 2007. The overall findings indicated that the Combined Code (2006) had general support and that the FRC would concentrate on improving the practical application of the Combined Code.

In June 2008, the FRC published a new edition of the Combined Code which introduced two changes. These changes were (i) to remove the restriction on an individual chairing more than one FTSE 100 company; and (ii) for listed companies outside the FTSE 350, to allow the company chairman to sit on the audit committee where he or she was considered independent on appointment.

The FRC stated on their website that the revised Code took effect at the same time as new FSA Rules implementing EU requirements relating to corporate governance statements and audit committees. The revised code and new rules will apply to accounting periods beginning on or after 29 June 2008. In practice this means most companies will begin to apply them in 2009, and will report against them for the first time in 2010.

b) Revised Smith Guidance, 2008:

A new edition of the guidance was issued in October 2008. The main changes to the guidance as detailed on the FRC website are:
Audit committees are encouraged to consider the need to include the risk of the withdrawal of their auditor from the market in their risk evaluation and planning; companies are encouraged to include in the audit committee's report information on the appointment, reappointment or removal of the auditor, including supporting information on tendering frequency, the tenure of the incumbent auditor and any contractual obligations that acted to restrict the committee's choice of auditor; a small number of detailed changes have been made to the section dealing with the independence of the auditor, to bring the guidance in line with the Auditing Practices Board's Ethical Standards [2004, revised 2008) for auditors, which have been issued since the guidance was first published in 2003; and an appendix has been added containing guidance on the factors to be considered if a group is contemplating employing firms from more than one network to undertake the audit.

c) Higgs, 2003:

The Higgs Review, chaired by Derek Higgs, reported in January 2003 on the role and effectiveness of non-executive directors. Higgs offered support for the Combined Code whilst making some additional recommendations. These recommendations included : stating the number of meetings of the board and its main committees in the annual report, together with the attendance records of individual directors; that a chief executive director should not also become chairman of the same company; non-executive directors should meet as a group at least once a year without executive directors being present, and the annual report should indicate whether such meetings have occurred; chairmen and chief executives should consider implementing executive development programmes to train and develop suitable individuals in their companies for future director roles; the board should inform shareholders as to why they believe a certain individual should be appointed to a non-executive directorship and how they may meet the requirements of the role; there should be a comprehensive induction programme for new non-executive directors, and resources should be available for ongoing development of directors; the performance of the board, its committees and its individual members, should be evaluated at least once a year, the annual report should state whether these reviews are being held and how they are conducted; a full time executive director should not hold more than one non-executive directorship or become chairman of a major company; no one non-executive director should sit on all three principal board committees (audit, remuneration, nomination). There was substantial opposition to some of the recommendations but they nonetheless helped to inform the Combined Code. Good practice suggestions from the Higgs Report were published in 2006.
Following a recommendation in chapter 10 of the Higgs Review, a group led by Professor Laura Tyson, looked at how companies might utilize broader pools of talent with varied skills and experience, and different perspectives to enhance board effectiveness. The Tyson report was published in 2003.

Question 26.

a) State the changes brought about by The Companies Act, 2006, in relation to directors, shareholders, company secretaries and auditors.

b) Write a note on Financial Reporting Council.

Answer:

a)

The government published the Company Law Reform Bill in November 2005, and the Companies Act 2006 was enacted in late 2006. The Act updates previous Companies' Acts legislation, but does not completely replace them, and it contains some significant new provisions which impacts on various constituents including directors, shareholders, auditors and company secretaries. The act draws on the findings of the Company Law Review proposals'.
The main features are as follows:

- Directors' duties are codified;
- Companies can make greater use of electronic communications for communicating with Shareholders;
- Directors can file service addresses on public record rather than their private home addresses;
- Shareholders will be able to agree limitations on directors' liability;
- There will be simpler model Articles of Association for private companies, to reflect the way in which small companies operate;
- Private companies will not be required to have a company secretary;
- Private companies will not need to hold an annual general meeting unless they agree to do so;
- The requirement for an operating and Financial review (OFR) has not been reinstated, rather companies are encouraged to produce a high quality Business Review;
- Nominee shareholders can elect to receive information in hard copy form or electronically if they wish to do so;
- Shareholders will receive more timely information;
- Enhanced proxy rights will make it easier for shareholders to appoint theirs to attend and vote at general meetings;
- Shareholders of quoted companies may have a shareholder proposal (resolution);
- circulated at the company's expense if received by the financial year end;
- Whilst there has been significant encouragement over a number of years to encourage institutional investors to disclose how they use their votes, the act provides a power which could be used to require institutional investors to disclose how they have voted.

Overall there seems to be an increasing burden for quoted companies whilst on the other hand the burden seems to have been reduced for private companies. In terms of the rights of shareholders these are enhanced in a number of ways including greater use of electronic communications, more information, enhanced proxy rights, and provision regarding the circulation of shareholder proposals at the company's expense. Equally there is a corresponding emphasis on shareholders' responsibilities with encouragement for institutional shareholders to be more active and to disclose how they have voted.

b) The Financial Reporting Council (FRC) has six operating bodies: the Accounting Standards Board (ASB), the Auditing Practices Board (APB), and the Board for Actuarial Standards (BAS), the Professional oversight Board, the Financial Reporting Review Panel (FRRP), and the Accountancy and Actuarial Discipline Board (AADB).
The importance placed on corporate governance is evidenced by the fact that, in March 2004, the FRC set up a new committee to lead its work on corporate governance.
Overall, the FRC is responsible for promoting high standards of corporate governance. It aims to do so by:

- maintaining an effective Combined Code on Corporate Governance and promoting its widespread application;
- ensuring that related guidance, such as that on internal control, is current and relevant;
- influencing EU and Global Corporate Governance developments;
- helping to promote boardroom professionalism and diversity;
- encouraging constructive interaction between company boards and institutional shareholders.

The FRC has carried out several consultative reviews of the Combined Code which led to the amended Combined Code in 2006, and subsequently in 2008 (discussed earlier). The latest review took place in 2008. The frequency of the reviews are both an indicator of the FRC's responsibility for corporate governance of UK companies which involves leading public debate in the area and its response to the global financial crisis which has, in turn, affected confidence in aspects of corporate governance.
The FRC website mentions the independent review of the governance of banks and other financial institutions carried out by Sir David Walker. The Walker Review published its draft recommendations in July 2009, some of the recommendations could be taken forward through amendments to the Combined Code. The FRC is considering the extent to which the Walker Review recommendations may be applicable for some or all listed companies in other sectors.

Question 27.

a) 'Does CSR amount to charity' Discuss.

b) What is corporate citizenship.

Answer:

Corporate Social Responsibility is not charity

The originally defined concept of CSR needs to be interpreted and dimensionalised in the broader conceptual framework of how the corporate embed their corporate values as a new strategic asset, to build a basis for trust and cooperation within the wider stakeholder community.
Though there have been evidences that record a paradigm shift from charity to a long-term strategy, yet the concept still is believed to be strongly linked to philanthropy. There is a need to bring about an attitudinal change in people about the concept.
By having more coherent and ethically driven discourses on CSR, it has to be understood that CSR is about how corporates place their business ethics and behaviors to balance business growth and commercial success with a positive change in the stakeholder community.
Several corporates today have specific departments to operationalise CSR. There are either foundations or trusts or a separate department within an organisation that looks into implementation of practices.
Being treated as a separate entity, there is always a flexibility and independence to carry out the tasks.
But often these entities work in isolation without creating a synergy with the other departments of the corporate. There is a need to understand that CSR is not only a pure management directive but it is something that is central to the company and has to be embedded in the core values and principles of the corporate.
Whatever corporates do within the purview of CSR has to be related to core business. It has to utilise things at which corporates are good; it has to be something that takes advantage of the core skills and competencies of the companies. It has to be a mandate of the entire organisation and its scope does not simply begin and end with one department in the organisation.
While conceptualisation and implementation seem firmly underway, evaluation is still taking a back seat. There is a need to incorporate an evaluation plan, which along with presenting a scope of improvement in terms of fund utilisation and methodology adopted for the project, measures the short and long term impact of the practices.
While there have been success stories of short term interventions, their impact has been limited and have faded over a period of time. It is essential for corporates to adopt a long term approach rather than sticking to short term interventions, involving the companies and employees in the long-term process of positive social transition.

A clearly defined mission and a vision statement combined with a sound implementation strategy and a plan of action firmly rooted in ground realities and developed in close collaboration with implementation partners, is what it takes for a successful execution of CSR.
An area that can be looked upon is the sharing of best practices by corporates. A plausible framework for this could be bench-marking. While benchmarking will help corporates evaluate their initiatives and rank them, it will also provide an impetus to others to develop similar kind of practices. Credibility Alliance, a consortium of voluntary organisations follows a mechanism of accreditation for voluntary sector. Efforts have to be directed towards building a similar kind of mechanism for CSR as well.
Sustainable development, like building a successful business, requires taking the long-term view. The KPMG International Survey of Corporate Responsibility Reporting 2005 showed that voluntary reporting on sustainability is on the increase across all the countries. Sustainability Reporting is emerging as a key vehicle to implement CSR and measure its progress in organisations.
As we move forward, increasing numbers of companies are expected to issue Sustainability Reports, with the scope of issues broadening from purely environmental reporting to a more comprehensive coverage of the environmental, social and economic dimensions.
There is a strong corporate initiative on joining the Global Compact Society in India, as well, with 43 Indian companies having already joined Global Compact as of January 2008.

b) A new terminology that has been gaining grounds in the business community today is Corporate Citizenship. So what is corporate citizenship and is this fundamentally different from corporate social responsibility? Corporate citizenship is defined by the Boston College Centre for Corporate Citizenship, as the business strategy that shapes the values underpinning a company's mission and the choices made each day by its executives, managers and employees as they engage with society.
According to this definition, the four key principles that define the essence of corporate citizenship are: (i) Minimise harm (ii) Maximise benefit (iii) Be accountable and responsive to key stakeholders (iv) Support strong financial results.
Thus, corporate citizenship, similar to its CSR concept, is focusing on the membership of the corporation in the political, social and cultural community, with a focus on enhancing social capital. Notwithstanding the different terminologies and nomenclature used, the focus for companies today should be to focus on delivering to the basic essence and promise of the message that embodies these key concepts – CSR and Corporate Citizenship.

Question 28.

a) Discuss the data requirements in whole life cycle costing and risk assessment.
b) Discuss the issue of subjectivity in whole life cycle costing.

Answer:

a)

Flanagan and Norman (1983) highlighted three fundamental requirements in successfully implementing a life-cycle costing methodology:

- A system by which the technologies can be used: a set of rules and procedures
- Data for the proposed project under consideration: estimates of initial and running costs of elemental life-cycles, discount rates, inflation indices, periods of occupancy, energy consumption, cleaning and the like. The data required to carry out WLCC analysis can be derived from a range of possible sources (Bennett & Ferry 1987):
  - Direct estimation from known costs and components
  - Historical data from typical applications
  - Models based on expected performance, average, etc.
  - Best guesses of the future trends in technology, market application
  - Professional skill and judgement.

All these factors have some bearing on the quality of data that is collected and how it is used in modelling and decision making processes. Whilst WLCC is now becoming widely used as a valuable tool in the design process, probably two key factors have undersized its potential impact (Flanagan *et al*. 1987; Bird 1987):

- A suspicion that life-cycle cost estimates are in some sense inaccurate or based merely on guesswork
- The absence of sufficient and appropriate cost and performance data.

b) The issue of subjectivity and vagueness is also a very important facet of WLCC. Subjectiveness, vagueness and ambiguity are different from randomness. Randomness deals with uncertainty (in terms of probability) concerning the occurrence or non-occurrence of anevent. Subjectivity, on the other hand, has to do with the imprecision and inexactness of events and judgements, including probability judgements. Many WLCC decision problems involve variables and relationships that are difficult, if not impossible, to measure precisely. For example, probability judgements about issues like inflation, operation costs, etc. are not always precise in WLCC and often cost analysts use subjective expressions to express their probability judgements. This applies to probability judgements as well as the costs and benefits in many WLCC decision problems. The requirement for high levels of precision may cause WLCC models to lose part of their relevance to the real world by ignoring some of the relevant decision attributes because these variables are incapable of precise measurement or because their inclusion may increase the complexity of the models. Hence, the key to successful WLCC and risk assessment is to build models that require little information – no more than the users can provide. This is a challenge, but it is a challenge that is addressed through the chapters of this book.

Question 29.

Justify with reasons the following statements:

a) "Knowledge without morality is a sin"

b) The governance Model positions management as accountable solely to investors.

c) 'Fairness and honesty are the pillars of success in business

Answer:

a) Knowledge without morality is a social sin.

- Business ethics means application of ethical norms to business. Business ethics encompass all those principles and standards that determine acceptable conduct.
- Application of scientific and technical knowledge in the conduct of business brings efficiency in business. However, at the same time the interests of all the stakeholders must also be protected.
- A business which uses knowledge for maximisation of profits by harming the interests of consumers, employees, environment, public interest or society at large, is not contributing anything to the society.
- As such, use of knowledge in business also requires consideration of ethical principles.

Thus, it is correct to say that knowledge without morality is a social sin.

b) The governance Model positions management as accountable solely to investors.

- As per the 'shareholders' approach' (the Traditional Governance Model), the primary and only objective of a business organisation is to maximise the profit.
- However, as per 'stakeholders' approach', every business has the responsibility towards all the stakeholders.

- A business that is responsive to the demands of all of its stakeholders is better positioned to achieve long-term financial success.
- The 'stakeholder approach' requires the business to balance the needs of all the stakeholders, viz. reward the shareholders adequately and at the same time protect and promote the interests of all the stakeholders.

Thus the statement "The Governance Model positions Management as accountable solely to investors" is incorrect.

c) Fairness and honesty are the pillars of success in business

- 'Fairness' means to deal fairly and honestly with all the stakeholders, including the shareholders, creditors, lenders, suppliers, customers and employees.
- 'Fairness and honesty' requires complying with all the applicable laws and regulations, not to cheat or deceive customers, not to carry on anti-competitive practices, creating an environment free from discrimination, exploitation and harassment and so on.
- It is in the long term interest of a business organisation to observe business ethics. Adhering to the principles of business ethics creates a positive environment for the long term prosperity of the business. In other words, there is a positive correlation between fairness and honesty and long term profitability.
- Thus, the statement "Fairness and honesty are the pillars of success in business" is correct.

Question 30.

Explain with the help of a case study, how the corporate in today's business world maintain their corporate social responsibility.

Answer:

Name: Dr Reddy's Laboratories
Thematic Areas: Microfinance, Education, Health, Environment, Livelihood and Social Entrepreneurship
Case Study:
Dr. Reddy's purpose is to help people lead healthier lives. This, combined with a clear commitment to their values and ethical practices, forms the foundation of sustainability or CSR.
Being a pharmaceutical company they are deeply sensitive to the needs of accessibility and affordability of medicines in developing and developed countries. They define their strategy and determine their impact.
In an era when increasing demands are being made on healthcare services, generic medicines provide a major benefit to society by ensuring patient access to quality, safe and effective medicines while reducing the cost of healthcare.
Generic medicines cost a fraction of the original products, which is good news for patients and means greater access for more people.
Their Active Pharmaceutical Ingredients (API) and generics businesses focus on affordability by providing lower cost alternatives. They are addressing access needs by investing in innovation with emphasis on New Chemical Entity (NCE) Re-search and Differentiated Product Development that address unmet and poorly met medical needs.
Their product development effort with example of innovation in making medicines affordable and accessible. In addition, the triple bottom line approach enables us to deliver sustained value with equal emphasis on people, planet and profits through environmentally friendly and socially responsible operations.

Their CSR efforts encompass sustainable business practices, safety, health and environment (SHE) systems, patient assistance programmes, community development, people practices and citizenship.

Dr Reddy's was one of the earliest in establishing a zero liquid discharge facility to ensure 100 percent effluent recycling. They have significant improvements in process development with growing emphasis on green chemistry. Energy saving initiatives and awareness communication on Climate Change is being accelerated in the company Programmes like Sparsh, betaCare, Sarathi, deliver assistance to doctors, pharmacists and patients by improving access to medicines and patient education. These efforts complement our commitment to product responsibility ad-dressing quality and safety of our products.

Dr. Reddy's Execution Excellence Model (DREEM) has spawned focus action in Lean Manufacturing ("doing more with less") in both finished dosage and active pharmaceuticals. Organisational redesign of teams has increased throughput, provided higher quality, lower cost and integration of Intellectual Property in product development.

The community development efforts are evident in places where we live and work, with specific focus on manufacturing locations, implemented by CSR teams in each facility. With a combination of approaches communities in the neighborhood are being assisted to access healthcare, improved education opportunities and sustainable livelihoods.

They encourage employee giving in association with Naandi foundation, an organisation co-founded by Dr Reddy's. 6000 employees contribute to The Power of Ten, the employee giving programme.

Employees are encouraged to volunteer by forming specific interest groups and also join volunteering programmes with Dr Reddy's Foundation.

The Foundation, setup by the company, demonstrates their Citizenship work in the area of poverty alleviation, with specific emphasis on quality in education and sustainable livelihoods.

Over 100,000 sustainable livelihoods with Livelihood Advancement Business School (LABS) programme and out-reach to over 34,000 children in government run schools through School Community Partnerships in Education (SCOPE).

Sustainability involves almost every aspect of a company. It ranges from purpose and values, marketplace and innovation, workplace safety, people practices, environment management, human rights to community contribution.

Dr Reddy's embraces the principles of sustainability to drive responsibility and to create the capacity to re-invent, sustain and thrive through changing generations of technology, managers, shareholders and society.

Dr. Reddy's is the only Indian pharmaceutical company to publish a Sustainability Report and among the few Indian companies to do so. The report is prepared according to guidelines recommended by Global Reporting Initiatives.