

Answer to MTP_Final_Syllabus 2012_Jun 2015_Set 1

Paper-13: CORPORATE LAWS AND COMPLIANCE

Time Allowed: 3 hours

Full Marks: 100

Section A (Corporate Laws)

Answer Question No.1 (carrying 15 marks) which is compulsory and answer any four (carrying 15 marks each) from the rest in this section

1. (a) India Bank, a National Bank, acquired on 1st January 2014 a building, fully occupied by various tenants, from Mr. Raj, who is the owner of the building. In discharging of a Term Loan advanced to Mr. Raj, who had mortgaged the said building as security with the said Bank and failed to repay the Loan. The said Bank wants to keep the Building permanently with it and earn the rent from tenants. You are required to state with reference to the provisions of the Banking Regulation Act, 1949 whether the said Bank can do so. [4]

- (b) Nisha Textiles Ltd. is a company engaged in manufacture of fabrics. The Company has investments in shares of other Bodies Corporate including shares in Nisha Cotton Co. Ltd. and it has also advanced loans to other Bodies Corporate. The aggregate of all the investments made and loans granted by Nisha 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, Nisha Textiles Ltd. has obtained a term loan from Industrial Development Bank of India and the same is still subsisting. Now the company wants to increase its holding from 70% to 80% of the equity share capital in Nisha Cotton Co. Ltd. by purchase of additional 10% shares from other existing shareholders.

State the legal requirements to be complied with by Nisha Textiles Ltd. under the provisions of the Companies Act, 2013 to give effect to the above proposal.

Will your answer be different if Nisha Textiles Ltd. would have defaulted in payment of matured fixed deposits accepted by it from the public? [5]

- (c) M/s Raja Limited was wound up by the court. The official liquidator invited claims from the creditors which stood as under:

Income Tax dues	₹ 11.00 lakhs
Sales Tax dues	₹ 5.00 lakhs
Dues of workers	₹ 25.00 lakhs
Unsecured loans payable to directors	₹ 25.00 lakhs
Trade creditors who supplied raw material	₹ 15.00 lakhs
Secured creditors being the bankers of the company	₹ 75.00 lakhs
Total	₹ 156.00 lakhs

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Official Liquidator could realize only ₹80.00 lakhs by sale of the assets and realization made from company's debtors, which is not sufficient to pay to all the creditors. Please decide the order of priority for payment to creditors explaining the relevant provisions of the Companies Act, 1956. [6]

For part (c) of the above question, provisions relating to Companies Act, 1956 is considered while answering since corresponding sections of Companies Act, 2013 are still not enforced.

Answer: 1. (a)

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

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

In the given case, India Bank proposes to keep the building for earning rent from tenants, and not for its own use. In view of the provisions of section 9, India Bank of India cannot keep the building permanently with it for the purpose of earning rent from tenants. It shall have to dispose of the Building within 7 years from the date of its acquisition, i.e. on or before 31st December, 2021.

However, if the approval of the Reserve Bank is obtained, it may continue to hold the Building till such extended period as is sanctioned by the Reserve Bank. The Reserve Bank shall not permit the Union Bank to hold the property beyond 31st December, 2026.

Answer: 1. (b)

As per section 186(11), any loans, investments etc. made by a holding company in its wholly owned subsidiary are outside the preview of Section 186. However, Nisha Cotton Co. Ltd. is not a wholly owned subsidiary of Nisha Textiles Ltd. and hence investment in Nisha Cotton Co. Ltd. is not covered by the exemption under section 186(11).

The aggregate of loans and investments already made by Nisha Textiles Ltd. exceeds the two limits of 60% and 100% specified under section 186. Therefore, the company can make new inter-corporate investments only by passing a special resolution.

The proposed investment can be made as follows:

- (a) A resolution shall be passed at a Board meeting with the consent of all the directors present.
- (b) A special resolution shall be passed in the general meeting. The notice of special resolution must indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made, the purpose of the investment, specific source of funding and other similar details.
- (c) Since, the aggregate investments exceed the limit of 60%, prior approval of IDBI shall be obtained.

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- (d) The company shall enter the prescribed particulars of the investment in the register maintained for this purpose within 7 days of making the investment.
- (e) The company shall disclose to the members in the financial statement
 - The full particulars of the loans, investment made or guarantee given or security provided; and
 - The purpose for which the loan or guarantee or security is proposed to be utilized by the recipient.
- (f) The company shall ensure that no default with respect to public deposits is subsisting.

If the company has defaulted in repayment of public deposits, the company cannot make any investments even if special resolution and resolution of Board is passed. The investments can be made only after the default has been made good.

Answer: 1. (c)

Section 529A(1) provides that in the winding-up of a company, the following dues shall be paid in priority to all other debts irrespective of anything contained in any other provision of this Act or any other law for the time being in force:

- (a) Workmen's dues; and
- (b) Debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues, shall be paid in priority to all other debts.

The debts listed under section 529A shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

The order of payment of liabilities adopted by the liquidator shall be as under:

1. Overriding preferential payments under section 529A (i.e., workmen's dues and debts due to secured creditors).
2. Costs and expenses of winding up.
3. Preferential payments under section 530.
4. Creditors secured by a floating charge.
5. Unsecured creditors.

In the present case, ₹80 lakhs have been realised by the sale of all the assets of the company. The amount due to secured creditors is ₹75 lakhs and the workmen's dues are ₹25 lakhs. Overriding preferential payments (workmen's dues and secured creditors) amount to ₹100 lakhs.

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Therefore, the workmen's dues and dues payable to secured creditors shall abate in equal proportions, i.e., payments to workmen and secured creditors shall be made in the proportion of amount owed by the company to them (i.e., in the ratio of 75:25). Accordingly, the workers shall be paid ₹20 lakhs and the secured creditors shall be paid ₹ 60 lakhs. No payment shall be made to the Government authorities for income tax dues, sales tax dues, unsecured loans payable to directors or to trade creditors who supplied raw material.

2. (a) A Public Company has been declaring dividend at the rate of 10% on equity shares during the last 5 years. The company has not made adequate profits during the year ended 31st March, 2015, but it has got adequate reserves which can be utilised for maintaining the rate of dividend at 20%.

Advise the Company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2014-15.

Would your answer be different if the company utilised only the profits made in the previous years and retained in the profit and loss account for the purpose of payment of dividend at the rate of 20% for the year 2014-15? [5]

- (b) Following is the latest audited Balance Sheet of ABC Ltd.

Capital and liabilities	₹	₹	Assets	₹
Equity Share Capital (10000 shares of 100 each)	10,00,000		Goodwill	1,00,000
Less: Calls unpaid	10,000	9,90,000	Land and Buildings	10,50,000
Preference Share Capital		1,50,000	Plant and machinery	20,25,000
Securities Premium A/c		1,50,000	Equity shares in A Ltd.	1,25,000
Capital Redemption Reserve		2,25,000	Preference shares in B Ltd.	50,000
General Reserve		5,00,000	Debentures in C Ltd.	1,00,000
Profit & Loss A/c		2,20,000	Shares in P Ltd.	2,25,000
Sinking Fund Reserve		1,10,000	Capital in Z & Co.	1,00,000
Dividend Equalisation Reserve		60,000	Current Assets	55,000
Loan from TIIIC		10,00,000		
Deposits from S Ltd.		2,00,000		
Current Liabilities		1,25,000		
Provision for Taxation		1,00,000		
		38,30,000		38,30,000

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The following is the additional relevant information:

- (i) Of the equity shares capital, 3,000 shares have been issued as rights shares and 2,000 shares as bonus shares.
- (ii) B Ltd. is subsidiary of ABC Ltd. with 90% shareholding, whereas A Ltd. is wholly owned subsidiary of ABC Ltd.
- (iii) Z & Co. is a partnership firm. The directors seek advice as to whether the following additional investments can be made by a decision taken in a Board Meeting:
 - a. Loan to A Ltd. ₹10,00,000
 - b. Debentures in B Ltd ₹2,25,000
 - c. Purchase of shares of Shree Ltd. in the open market ₹95,000

State reasons.

[8]

- (c) Mr. Ghanshyam goes abroad for four months from 04.11.2014 and an alternate director has been appointed in his place. Therefore, advice as to sending of notice as required under section 173 of the Companies Act, 2013. [2]

Answer: 2. (a)

The fundamental principle with respect to payment of dividend is that dividend is to be paid only out of profits. In other words, the dividend can be paid only out of the following sources:

- (a) Profits of current financial year
- (b) Undistributed profits of previous financial years, i.e., accumulated profits of previous years
- (c) Moneys provided by the Central Government or State Government in pursuance of guarantee given by it.

Payment of dividend out of reserves

As per Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, dividend can be declared out of the profits transferred to the reserves subject to the following conditions:

- (a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year.
- (b) The total amount to be withdrawn from reserves must not exceed 1/10th of aggregate of paid up capital & free reserves as appearing in the latest audited financial statement.
- (c) The amount so withdrawn shall be first utilised to set off the losses incurred in the financial year in which dividend is declared, and the balance amount can only be utilised for the declaration of dividend.
- (d) The balance of reserves, after such withdrawal, shall not fall below 15% of paid up share capital as appearing in the latest audited financial statement.
- (e) No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company of the current year.

In the present case, the company intends to distribute dividend at the rate of 20%. But as per the provisions discussed in point (a) above, the rate of dividend declared cannot exceed 10%, i.e. the rated dividend declared out of reserves can be a maximum of 10%. Thus, the company cannot declare dividend @ 20% out of reserves.

Payment of dividend by utilizing credit balance of Profit and Loss Account

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Carried forward profits which have not been transferred to the reserves (i.e. credit balance in the Profit and Loss Account) can be utilized for payment for dividend without any restrictions. Such utilization does not amount to declaration of dividend out of reserves.

Thus, the company may declare dividend @20% for the year 2014-15 out of the accumulated profits retained in the Profit and Loss Account without any restriction, and without fulfilling any condition contained in the Companies (Declaration and Payment of Dividend) Rules, 2014.

Answer: 2. (b)

Step 1: Calculation of paid up capital and free reserves:

Paid Up Capital: Equity Share Capital	10,00,000
Less: Calls Unpaid	10,000
	9,90,000
Preference Share Capital	1,50,000
Total	11,40,000

NOTE: Preference Share Capital is to be included for calculating paid up capital.

Free Reserves: Securities Premium	1,50,000
General Reserve	5,00,000
Profit & Loss Account	2,20,000
Dividend Equalisation Reserve	60,000
Total	9,30,000

NOTE: Capital Redemption Reserve and Sinking Profit Reserve are not available for distribution as dividend and therefore shall not be considered for computing free reserves.

Step 2: Calculation of the limits:

- (A) 60% of Paid up Capital and free reserves
= 60% of (11,40,000 + 9,30,000)
= 60% of (20,70,000)
= 12,42,000
- (B) 100% of Free Reserves as computed above ₹9,30,000
- (A) or (B) whichever is higher ₹12,42,000

Step 3: Computation of Value of transactions as per Balance Sheet:

Preference Shares in B Ltd	50,000
Debentures In C Ltd	1,00,000
Shares in P Ltd	2,25,000
	3,75,000

NOTE:

1. Equity Shares in A Ltd is not considered as acquisition of shares by a holding company in its wholly owned subsidiary is exempted from the provisions of 186. The shares are not to be considered while computing Limits.
2. As Z & Co., is a partnership firm the capital therein is not considered.

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Step 4: Computation of Proposed Investments:

Debentures in B Ltd	2,25,000
Purchase of shares in Shree Ltd	95,000
	3,20,000

- The aggregate of the investments already made ₹ (3,75,000) together with the proposed investments of ₹(3,20,000) amounts to ₹6,95,000.
- This is well within the ceiling limit of ₹12,42,000 computed in step 2 above.
- Therefore there is no requirement as to previous approval by way of special resolution.
- The Board of directors should approve the proposed transactions at a meeting of the board by passing a resolution agreed to by all the directors present at the meeting.
- Previous approval of M/s. TIIIC a PFI is not required as:
 - (a) There is no default towards TIIIC and
 - (b) The aggregate of the value of the transactions (₹6,95,000) does not exceed 60% paid up capital and free reserves i.e. ₹12,42,000.

Answer 2. (c)

As per section 173(3), a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by electronic means. As can be seen, section 173(3) does not specifically state that notice to an alternate director shall be served. However, an alternate director is a director in his own right. He is not a proxy or representative of the original director. The grounds of vacation of office also apply to him as these apply to the original director, e.g., an alternate director shall vacate office if he does not attend the Board meetings during a period of 12 months as per the provisions of section 167(1)(b). As such, it is implied that notice to an alternate director is to be given. Thus, notice should be served to both, the alternate director as well as the original director. Notice to Mr. Ghanshyam, who is outside of India, shall be served at their addresses registered with the company.

3. (a) Divya, a resident in India is likely to inherit an immovable property in USA from her father, who is a resident outside India. Advise Divya about the restrictions, if any, in this regard. Will your answer be different if she is likely to inherit foreign securities? [4]

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

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

- (i) What is the price band that can be indicated in the red herring prospectus, if the floor price is proposed to be fixed at ₹300 per equity share?
- (ii) What are the restrictions, if the company wants to revise the price band during the bidding period?

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(iii) How the shares are to be allocated to different categories of investors like Qualified Institutional Buyers, Retail Individual Investors, etc.? [8]

(c) Mr. Nihar holding 3% Shares in Super Ltd., became a Director of this Company on 01.05.2014. The Company prior to his appointment as Director, had commenced transactions with A Ltd. in the next Board Meeting to be held on 10.05.2014, the Board proposes to discuss about price revisions sought for by A Ltd. Briefly explain –

(i) Whether Mr. Nihar should make a disclosure of his interest in A Ltd, assuming that the Company is going to have transactions with A Ltd. on a continuous basis, if yes, when and how? When should it be renewed?

(ii) Can he vote in the price revision resolution in the Board Meeting?

You are informed that Mr. Nihar holds 1.5% of the Share Capital of A Ltd and that his wife holds another 3% of the Share Capital of A Ltd. [3]

Answer 3 (a):

Holding of Currency, Security and Property [Sec. 6(4) & 6(5)]:

(a) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India, if such currency, security or property was:

- Acquired, held or owned by such person when he was resident outside India, or
- Inherited from a person who was resident outside India.

(b) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India, if such currency, security or property was:

- Acquired, held or owned by such person when he was resident in India, or
- Inherited from a person who was resident in India.

Note: However, Current Income on such assets like rent, dividend, interest etc. have to be repatriated to India within the prescribed time limit as specified in Regulation 5(i) of FEMA (Realisation, Repatriation and Surrender of Foreign Exchange), 2000.

There are no restrictions with regard to inheritance of either immovable property situated outside India or of foreign security, from a person resident outside India. Further, such inheritance does not require approval of RBI. Hence, Divya can hold the immovable property/foreign security, after such inheritance.

Answer 3 (b):

The provisions relating to book building are contained in Part A of Schedule XI to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. The relevant Clauses of Schedule XI are discussed below:

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As per Sub-Clause (b) of Clause (8), where the issuer decides to opt for price band instead of floor price, the issuer shall also ensure compliance with the following conditions:

- (i) The cap of the price band should not be more than 20% of the floor of the band; i.e. cap of the price band shall be less than or equal to 120% of the floor of the price band;
- (ii) The price band can be revised during the bidding period in which case the maximum revision on either side shall not exceed 20% i.e. floor of price band can move up or down to the extent of 20% of floor of the price band disclosed in the red herring prospectus and the cap of the revised price band will be fixed in accordance with clause (i) above;
- (iii) Any revision in the price band shall be widely disseminated by informing the stock exchanges, by issuing press release and also indicating the change on the relevant website and the terminals of the syndicate members.
- (iv) In case the price band is revised, the bidding period shall be extended as per provisions of sub-regulation (2) of regulation 46.

Applying the provisions of the said Clause to the given case:

- (i) The price band that can be indicated in the red herring prospectus shall be ₹300 to ₹360.
- (ii) The price band can be revised during the bidding period. However, the maximum revision on either side shall not exceed 20% of the floor price. Thus, floor of the price band can move up or down to the extent of 20% of the floor price disclosed in the red herring prospectus, and the cap of the price band shall not be more than 20% of the revised floor price. Accordingly, in the given case, the revised price band can be ₹240 to ₹288 on the lower side, or ₹360 to ₹432 on the upper side.
Any revision in the price band shall be widely disseminated by informing the stock exchange, by issuing press release and also indicating the change on the relevant website and terminals of the syndicate members. Also, the bidding period shall be extended for a further period of 3 days, subject to the total bidding period not exceeding 13 days.
- (iii) As per Regulation 43 of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, in an issue made through the book building process, the allocation in the net offer to public category shall be made as follows:
 - (a) not less than 35% to retail individual investors;
 - (b) not less than 15% to non-institutional investors;
 - (c) not more than 50% to qualified institutional buyers, 5% of which shall be allocated to mutual funds.

Answer 3 (c):

- 1. Disclosure of Interest: Mr. Nihar should disclose his interest as required u/s 184.**

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- The words 'becomes concerned or interested' occurring in the provision denotes a present state of thing.
- In case of a person who was actually concerned or interested in the contract or arrangement, the liability for disclosure arises the moment he accepts office as Director.
- If a Director acquired interest in a running transaction of the Company, he should disclose this fact at the next Board Meeting held after he becomes so interested.

Time of disclosure :

At the First Board Meeting :

- In which he participates as a Director
- In every financial year
- After any change occurs in any disclosures already made.

2. Voting at Board Meeting:

- (a) U/s 184, an Interested Director shall not vote on the resolution in respect of the contract in which he is interested.
- (b) However, provisions of Sec. 184 are not applicable if the interest of the Director consists less than 2% of the Paid-Up Capital in the other Company.
- (c) In the given case, Mr. Nihar holds 1.5% of the Share Capital of A Ltd, and his wife holds another 3% in the Share Capital of A Ltd, and therefore it cannot be said that he is interested only to the extent of less than 2% of the Paid-Up Share Capital of A Ltd.
- (d) Hence, Mr. Nihar should not participate and vote in the Board Meeting to be held on 10.05.2014, in the matter pertaining to A Ltd.

4. (a) **Mr. SOURAV is a director of M/s ASHEEKA Ltd. He has approached M/s Housing Finance Co. Ltd. for the purpose of obtaining a loan of ₹50 lacs to be used for construction of his residential house. The loan was sanctioned subject to the condition that M/s ASHEEKA Ltd. should provide the guarantee for repayment of loan installments by Mr. SOURAV. Advise Mr. SOURAV.** [5]

- (b) **M/s Ahana Private Limited was incorporated in the year 2010 under the Companies Act, 1956 by 3 brothers, namely, Amit, Anil and Akhlesh. All the three were Promoter-directors named in the Articles of Association and subscribed for 100 shares each in the company through Memorandum of Association. Thereafter, from time to time, further shares were allotted in proportion of one-third to each of them and in due course, the company started earning substantial profits. Due to greed of money, the two brothers, namely, Amit and Anil, joined hands together to assume complete control of the company, leaving their brother, Akhlesh in lurch. Both the brothers got further shares allotted to themselves, thereby their joint shareholding increased from 66 2/3% to 90%, while the shareholding of Akhlesh got reduced from the erstwhile 33 1/3% to 10%. No notice of any Board Meeting was sent to Akhlesh, who was sidelined and was also removed as a Director.**

Aggrieved by the decisions taken by his two brothers at his back, Akhlesh seeks your advice for taking out appropriate proceedings before the court or judicial authority of competent jurisdiction. Also suggest the nature of reliefs he may claim while filing his case. [4]

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(c) Amit, Biswajit, Shyam and Tarak are Directors of XYZ Ltd. Shyam and Tarak did not attend the Board Meeting which was properly convened. At the said Board Meeting, two Additional Directors was appointed. They are the wife and brother of Amit and Biswajit respectively, the Directors who attended the Board Meeting. Explain whether the Directors who attended the Board Meeting are entitled to vote on the subject-matter and whether the appointment of Additional Directors is valid. [4]

(d) Smart Banking Company Limited has advanced a sum of ₹25.00 lacs to Mr. Reliable, a director of the company, to meet his personal liabilities but due to some adverse conditions, Mr. Reliable is not in a position to repay the loan. The Board of directors of the company is considering to remit a sum of ₹10.00 lacs. The Board of Directors seeks your advice. [2]

Answer 4(a):

As per section 185 of the Companies Act, 2013, no company shall, directly or indirectly give any guarantee in connection with a loan taken by a director. Section 185 does not permit a company to give guarantee even with the approval of the Central Government. However, the prohibition under section 185 shall not apply to a company, which, in the ordinary course of its business, gives guarantees for the repayment of any loan.

In the given case, guarantee cannot be given by M/s. Asheeka Ltd. in respect of a loan advanced to Mr. Sourav by a housing finance company, unless M/s. Asheeka Ltd., in the ordinary course of its business, gives guarantees for the repayment of any loan.

Answer: 4. (b)

Issue of further shares amounts to oppression if it is proved that the idea of issuing further shares was to benefit one group to the detriment of the other [Piercy v Mill(s) d Co. (1920) 1 Ch. 77]. Further issue of shares must be made for the benefit of the company. If the directors use their fiduciary power of issuing shares for an extraneous purpose like maintenance or acquisition of control over the affairs of the company, it would amount to oppression [Needle Industries Case]. It is not open to the directors to issue and allot shares in a manner by which an existing majority of shareholders is reduced to a minority. If the issue of shares disturbs the existing majority of the shareholders and if it is not bonafide, it will amount to oppression [Re, Glaco Series (P)Ltd.].

In the given case, further shares have been allotted to Amit and Anil without simultaneous offer to other members (Akhlesh) on pro-rata basis. Such single act of issue of further shares shall have a continuous effect, and so it amounts to oppression, especially if, the Board meeting at which the further shares are allotted is held without complying with the requirements of section 173(3), and the member who was not offered further shares was also removed from directorship [Bhagirath Agarwala v Tara properties P. Ltd.]. Therefore, Akhlesh should file an application with the Company Law Board for claiming relief from oppression.

Answer: 4. (c)

In view of the opinion of Madras High Court & Tribunal Letter cited below, the appointment of relatives of Amit & Biswajit as Additional Directors is not valid.

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The question is whether the appointment of Additional Director would come within the scope of the word "contract or arrangement", in order to consider the Director to be "interested". The Court concluded that appointment as Director does not come within the scope of the expression "contract" (because the position of a Director may be conferred on a person by any method other than "contract"), but it would amount to "arrangement". So, the attending Directors became Interested Directors. Appointment of their relatives as Additional Directors was null and void – **Madras Tube Co. Ltd. Vs Harikrishna Somani 1 Comp LJ 195 (Mad)**.

It will be a clearly unsound Company practice if a Director, whose near relative is proposed to be appointed to the Board, were to participate in the discussions at the Board Meeting and vote on the proposal for such appointment – **L.No. 8/46/(300) 64-PR dated 27-01-1965**.

Note: Contrary opinion is taken by Bombay High Court

Appointment as an Additional Director of a person who is related to a Director does not violate the requirements of Sec. 188(1), because such appointment does not constitute any "contract or arrangement" of the Company with the Sitting Director. The Sitting Director is entitled to participate and vote – **Shailesh Harilal Shah Vs. Matushree Textiles Ltd. 82 CC 5 (Bom)**.

Answer 4. (d)

Section 20A of the Banking Regulation Act, 1949 provides that except with the prior approval of RBI, a banking company shall not remit in whole or in part any debt due to it by:

- (a) Any of its Directors, or
- (b) Any firm or company in which any of its Directors is interested as Director, Partner, Managing Agent or Guarantor, or
- (c) Any individual, if any of its Directors, is his Partner or Guarantor.

Sub-section (2) further provides that any remission of debt in contravention of the aforesaid shall be void and of no effect.

5. (a) Mr. Devesh was appointed as the managing director of Casual Industries Ltd. for a period of five years with effect from 1.4.2011 on a salary of ₹ 12 lakhs per annum with other perquisites. The Board of Directors of the company, on coming to know of certain questionable transactions, terminated the services of the managing director from 1.3.2014. Mr. Devesh termed his removal as illegal and claimed compensation from the company. Meanwhile the company paid a sum of ₹ 5 lakhs on ad hoc basis to Mr. Devesh pending settlement of his dues. Discuss with reference to Companies Act, 2013, whether:

- A. The company is bound to pay compensation to Mr. Devesh, and, if so, how much.**
- B. The company can recover the amount of ₹ 5 lakhs paid on the ground that Mr. Devesh is not entitled to any compensation, because he is guilty of corrupt practices. [4]**

(b) The promoters of a Company to be registered under the Companies Act, 2013 having its main object of carrying on the business as manufacture and stockiest of Iron and Steel, proposes that the name of the Company is to be 'Abha Steel Bank Limited'. You are required to state whether the said company with the proposed name can be registered. [3]

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(c) Printed Computer is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its headquarters in Pune. It has a branch in Dubai which is controlled by the headquarters in Pune. What would be the residential status under FEMA, 1999 of printer units in Pune and that of Dubai branch? [4]

(d) BOD of M/s SK Ltd., in its meeting held on 29th May, 2014 declared an interim dividend payable on paid up equity share capital of the company. In the Board meeting scheduled for 10th June, 2014, the Board wants to revoke the said declaration. You are required to state with reference to the provisions of the Companies Act, 2013 whether the BOD can do so. [4]

Answer 5 (a):

As per section 202 of the Companies Act, 2013 -

- Compensation can be paid only to a managing director or whole time director or manager.
- The compensation payable shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term or for 3 years, whichever is shorter.
- Where the director has been guilty of fraud or breach of trust or gross negligence in the conduct of the affairs of the company, he shall not be paid any compensation.

The answers to the given problem are as under:

- A. The company is not bound to pay compensation to Mr. Devesh if he has been found guilty of any fraud or breach of trust. However, it is not proper for the company to withhold the payment of compensation on the basis of allegations, unless there is a proper finding on the involvement of Mr. Devesh in corrupt practices. The compensation payable shall not exceed ₹ 25 lakhs, i.e. at the rate of ₹ 12 lakhs per annum for unexpired period of 25 months.
- B. As per the decision in Bell v Lever Bros [1932] AC 161 House of Lords, the compensation of ₹ 5 lakh already paid by the company to Mr. Devesh cannot be recovered back if the company later comes to know that Mr. Devesh was guilty of serious breaches of duty and corrupt practices which would have entitled the company to end the employment of Mr. Devesh without any compensation. It was also held that the managing director was under no obligation to disclose to the company the breach of duty so as to give an opportunity to the company to remove him without paying any compensation.

Answer 5 (b):

Section 7 of the Banking Regulation Act, 1949 states that:

1. **Use of words Bank, Banker or Banking:** No Company other than a banking Company shall use as part of its name or in connection with its business any of the words "Bank", "Banker" or "Banking" and no Company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.
2. No firm, individual or group of individuals shall, for the purpose of carrying on any business, use as part of its or his name any of the words "bank", "banking" or "banking Company".

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- 3. Not Applicable:** Section 7 not applicable under the following circumstances:
- (a) A Subsidiary of a banking Company formed for one or more of the purposes mentioned in u/s 19(1), whose name indicates that it is a subsidiary of that banking Company;
 - (b) Any association of Banks formed for the protection of their mutual interests and registered u/s 25 of the Companies Act.

Therefore, Company cannot have the name "ABC Steel Bank".

Answer 5 (c):

Section 2(u) defines a 'person'. As per this definition, the following shall be covered in the definition of a 'person':

- (a) A company.
- (b) Any agency, office or branch owned by a 'person'.

Section 2(v) defines a 'person resident in India'. As per this definition, the following shall be covered in the definition of a 'person resident in India':

- (a) An office, branch or agency in India owned or controlled by a person resident outside India.
- (b) An office, branch or agency outside India owned or controlled by a person resident in India.

In the given case, Printed Computers (Singapore), its headquarters in Pune as well as Dubai Branch is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.

- Printed Computers (Singapore) does not fall under any of the clauses of the definition of a 'person resident in India'. Therefore, Printed Computers (Singapore) is a person resident outside India.
- The Pune Headquarters of Printed Computers is a 'person resident in India' since it falls under the clause 'an office, branch or agency in India owned or controlled by a person resident outside India'.
- The Dubai branch of Printed Computers (Singapore), though not owned, is controlled by the Pune headquarters. The Dubai branch is a 'person resident in India' since it falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'.

Answer 5 (d):

As per section 2 (35) of the Companies Act, 2013, dividend includes any interim dividend. Therefore, all the provisions applicable to final dividend shall equally apply to interim dividend.

Thus, interim dividend once declared, like final dividend, becomes a debt payable by the company. Accordingly, once declared, interim dividend cannot be revoked except under the same circumstances in which the final dividend can be revoked.

The amount of interim dividend is to be compulsorily deposited in a separate bank account, within 5 days of passing the Board resolution declaring the interim dividend [Section 205(1A) of the Companies Act, 1956].

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The provisions contained in sections 205, 205A, 205C, 206, 206A of the Companies Act, 1956 and Section 127 of the Companies Act, 2013 shall, as far as may be, also apply to any interim dividend.

As per section 127 of the Companies Act 2013, dividend must be paid within 30 days of its declaration. Thus, interim dividend also be paid within 30 days of its declaration, i.e., within 30 days of date of passing the Board resolution declaring the interim dividend.

In the instant case, on declaration of interim dividend by the Board in a Board Meeting held on 29th May, 2014, the liability of the company to pay the interim dividend has become certain, and the payment of interim dividend must be made within next 30 days, viz. on or before 28th June 2014.

Therefore, revocation of interim dividend in the Board Meeting held on 10th June is not possible.

6. (a) Mr. Naman holding 3% Shares in OPQ Ltd., became a Director of this Company on 01.05.2014. The Company prior to his appointment as Director, had commenced transactions with A Ltd. in the next Board Meeting to be held on 10.05.2014, the Board proposes to discuss about price revisions sought for by A Ltd. Briefly explain –

(i) Whether Mr. Naman should make a disclosure of his interest in A Ltd, assuming that the Company is going to have transactions with A Ltd. on a continuous basis, if yes, when and how? When should it be renewed?

(ii) Can he vote in the price revision resolution in the Board Meeting?

(iii) You are informed that Mr. Naman holds 1.5% of the Share Capital of A Ltd and that his wife holds another 3% of the Share Capital of A Ltd. [2+3=5]

(b) The Central Govt. acquired a Banking Company. The scheme of acquisition, apart from other matters, provided for the quantum of compensation payable to the shareholders of the acquired Bank. Some Shareholders are not satisfied with the amount of compensation fixed under the scheme of acquisition.

Is there any remedy available to the shareholders under the provisions of the Banking Regulation Act, 1949? [3]

(c) What are the qualifications to be appointed as members of Central Commission as per The Indian Electricity Act, 2003? Also state the functions of the Central Commission. [3+4=7]

Answer: 6. (a)

1. Disclosure of Interest: Mr. Naman should disclose his interest as required u/s 299.

- The words 'becomes concerned or interested' occurring in the provision denotes a present state of thing.
- In case of a person who was actually concerned or interested in the contract or arrangement, the liability for disclosure arises the moment he accepts office as Director.
- If a Director acquired interest in a running transaction of the Company, he should disclose this fact at the next Board Meeting held after he becomes so interested.

2. Voting at Board Meeting:

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- (e) U/s 300, an Interested Director shall not vote on the resolution in respect of the contract in which he is interested.
- (f) However, provisions of Sec. 300 are not applicable if the interest of the Director consists solely of his holding only Qualification Shares, or less than 2% of the Paid-Up Capital in the other Company.
- (g) In the given case, Mr. Naman holds 1.5% of the Share Capital of A Ltd, and his wife holds another 3% in the Share Capital of A Ltd, and therefore it cannot be said that he is interested only to the extent of less than 2% of the Paid-Up Share Capital of A Ltd.
- (h) Hence, Mr. Naman should not participate and vote in the Board Meeting to be held on 10.05.2011, in the matter pertaining to A Ltd.

Answer: 6. (b)

Compensation to Shareholders of the Acquired Bank [Sec. 36AG]:

1. **Recipient:** The Central Govt. / Transferee Bank shall give the compensation determined in the prescribed manner, to:
 - (a) Registered Shareholder of the acquired Bank, or
 - (b) Where the acquired Bank is a Banking Company incorporated outside India, the acquired Bank
2. **Reference to Tribunal:**
 - (a) **Request:** If the amount of compensation offered is not acceptable to any person to whom the compensation is payable, the aggrieved person may request the Central Govt. in writing to have the matter referred to the Tribunal. Such a request shall be made before the date notified by the Central Govt.
 - (b) **Eligible Persons:** The Central Govt. shall have the matter referred to the Tribunal for decision, if it receives requests from:
 - Not less than 1/4th in number of the Shareholders holding not less than 1/4th in value of the Paid up Share Capital of the acquired Bank, or
 - Where the acquired Bank is a Banking Company incorporated outside India, from the acquired Bank.
3. **Finality of compensation:** If before the notified date, the Central Govt. does not receive requests as required, the amount of compensation offered, and where a reference has been made to the Tribunal, the amount determined by it, shall be the compensation payable and shall be final and binding on all parties concerned.

Answer: 6. (c)

Qualification for appointment of Members of Central Commission [Section 77]:

1. The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge of, or experience in, or shown capacity in, dealing with, problems relating to engineering, law, economics, commerce, finance or, management and shall be appointed in the following manner, namely:

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- (a) one person having qualifications and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity;
- (b) one person having qualifications and experience in the field of finance;
- (c) two persons having qualifications and experience in the field of economics, commerce, law or management:
Provided that not more than one Member shall be appointed under the same category under clause (c).

- 2. Notwithstanding anything contained in sub-section (1), the Central Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court:
Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India.
- 3. The Chairperson or any other Member of the Central Commission shall not hold any other office.
- 4. The Chairperson shall be the Chief Executive of the Central Commission.

Functions of Central Commission [Section 79]:

- 1. The Central Commission shall discharge the following functions, namely:
 - (a) to regulate the tariff of generating companies owned or controlled by the Central Government;
 - (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
 - (c) to regulate the inter-State transmission of electricity;
 - (d) to determine tariff for inter-State transmission of electricity;
 - (e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;
 - (f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;
 - (g) to levy fees for the purposes of this Act;
 - (h) to specify Grid Code having regard to Grid Standards;

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- (i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;
 - (j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;
 - (k) to discharge such other functions as may be assigned under this Act.
2. The Central Commission shall advise the Central Government on all or any of the following matters, namely:
- (a) formulation of National electricity Policy and tariff policy;
 - (b) promotion of competition, efficiency and economy in activities of the electricity industry;
 - (c) promotion of investment in electricity industry;
 - (d) any other matter referred to the Central Commission by that Government.
3. The Central Commission shall ensure transparency while exercising its powers and discharging its functions.
4. In discharge of its functions, the Central Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3.

Section B

(Corporate Governance and Responsibilities)

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

7. (a) **What is Corporate Governance? What is the need for Corporate Governance in India?**
- (b) **State the advantages of Good Corporate Citizenship.**
- (c) **State the factors influencing Corporate Social Responsibility (CSR).**
- (d) **Would you advocate the following understandings with relation to CSR? Discuss.**
- **Businesses invest the money, therefore they decide the modus operandi of the CSR initiative**
 - **Financial resources alone can meet CSR needs of an enterprise.**
 - **CSR is interchangeable with corporate sponsorship, donation or other philanthropic activities.**
- (e) **Can whole life risk be analysed?**
- (f) **Discuss, "Governance in India – The Path Ahead"** **[5×5 = 25]**

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Answer: 7. (a)

Corporate governance is:

- (i) The system by which companies are directed and controlled -The Cadbury Report, 1992.
- (ii) The process of supervision and control intended to ensure that the company's management acts in accordance with the interests of shareholders -Parkinson, 1994.
- (iii) Corporate Governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company -Report of N.R.Narayana Murthy Committee on Corporate Governance constituted by SEBI (2003).

Need for Corporate Governance:

Corporate Governance is integral to the existence of the company. It is needed to create a corporate culture of transparency, accountability and disclosure.

- i. **Corporate Performance:** Improved governance structures and processes help ensure quality decision-making, encourage effective succession planning for senior management and enhance the long-term prosperity of companies, independent of the type of company and its sources of finance.
- ii. **Enhanced Investor Trust:** Investors consider Corporate Governance as important as financial performance when evaluating companies for investment.
- iii. **Combating Corruption:** Companies that are transparent, and have sound system that provide full disclosure of accounting and auditing procedures, allow transparency in all business transactions, provide environment where corruption will certainly fade out.
- iv. **Better Access to Global Market:** A Good Corporate Governance system attracts investment from global investors, which subsequently leads to greater efficiencies in the financial sector.
- v. **Enhancing Enterprise Valuation:** Improved management accountability and operational transparency fulfill investors' expectations and confidence on management and corporations, and return, increase the value of corporations.
- vi. **Accountability:** An Investor relation 'is essential part of good Corporate Governance. Investors have directly/indirectly entrusted management of the company for creating enhanced value for their investment.
- vii. **Easy Finance from Institutions:** Evidence indicates that well-governed companies receive higher market valuations.
- viii. **Reduced Risk of Corporate Crisis and Scandals:** Effective Corporate Governance ensures efficient risk mitigation system in place

Answer: 7. (b)

Business cannot exist in isolation; business cannot be oblivious to societal development. The social responsibility of business can be integrated into the business purpose so as to build a positive synergy between the two.

- i. CSR creates a favourable public image, which attracts customers. Reputation or brand equity of the products of a company which understands and demonstrates its social

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responsibilities is very high. Customers trust the products of such a company and are willing to pay a premium on its products. Organizations that perform well with regard to CSR can build reputation, while those that perform poorly can damage brand and company value when exposed. Brand equity is founded on values such as trust, credibility, reliability, quality and consistency.

- ii. CSR activities have its advantages. It builds up a positive image encouraging social involvement of employees, which in turn develops a sense of loyalty towards the organization, helping in creating a dedicated work force proud of its company. Employees like to contribute to the cause of creating a better society. Employees become champions of a company for which they are proud to work.
- iii. Society gains through better neighbourhoods and employment opportunities, while the organization benefits from a better community, which is the main source of its workforce and the consumer of its products.
- iv. Public needs have changed leading to changed expectations from consumers. The industry/business owes its very existence to society and has to respond to needs of the society.
- v. The company's social involvement discourages excessive regulation or intervention from the Government or statutory bodies, and hence gives greater freedom and flexibility in decision-making.
- vi. The internal activities of the organization have an impact on the external environment, since the society is an inter-dependent system.
- vii. A business organization has a great deal of power and money, entrusted upon it by the society and should be accompanied by an equal amount of responsibility. In other words, there should be a balance between the authority and responsibility.
- viii. The good public image secured by one organization by their social responsiveness encourages other organizations in the neighborhood or in the professional group to adapt themselves to achieve their social responsiveness.
- ix. The atmosphere of social responsiveness encourages co-operative attitude between groups of companies. One company can advise or solve social problems that other organizations could not solve.
- x. Companies can better address the grievances of its employees and create employment opportunities for the unemployed.
- xi. A company with its —ear to the ground through regular stakeholder dialogue is in a better position to anticipate and respond to regulatory, economic, social and environmental change that may occur.
- xii. Financial institutions are increasingly incorporating social and environmental criteria into their assessment of projects. When making decisions about where to place their money, investors are looking for indicators of effective CSR management.
- xiii. In a number of jurisdictions, governments have expedited approval processes for firms that have undertaken social and environmental activities beyond those required by regulation.

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Answer: 7. (c)

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

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

Answer: 7. (d)

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

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

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

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

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

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

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

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

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

Answer: 7. (e)

Several methodologies are available to deal with WLCC risk analysis. The techniques that can be used in WLCC risk assessment decision making might be summarised as deterministic, probabilistic and AI. Deterministic methods measure the impact on project outcomes of changing one uncertain key value or a combination of values at a time. In contrast, probabilistic methods are based on the assumption that no single figure can adequately represent the full range of possible outcomes of a risky investment (Fuller & Petersen 1996). Rather, a large number of alternative outcomes must be considered and each possibility must be accompanied by an associated probability from a probability distribution, followed by a statistical analysis to measure the degree of risk. Using a deterministic approach, the analyst determines the degree of risk on a subjective basis. AI methods differ from the above approaches and use historical data to model cost and uncertainty in WLCC analysis. None of these techniques can be applied to every situation. The best method depends on the relative size of the project, availability of data and resources, computational aids and skills, and user understanding of the technique being applied.

Following the identification, quantification and development of risk responses, the related vulnerabilities of building assets need to be determined and planned for. This provides the basis on which risk management plans and decisions are made. The risk management planning process is concerned with putting in place the procedure for:

- (i) What response actions are needed
- (ii) When these response actions are needed
- (iii) How these actions are implemented
- (iv) Who is responsible for the implementation, control and monitoring of the actual progress of risk responses and management strategies that have been developed to deal with the identified risk.

Answer: 7. (f)

Governance in India: The Path Ahead

The Indian economy on the eve of the Twelfth Plan is characterized by strong macro-fundamentals and good performance over the Eleventh Plan period, though clouded by some

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slowdown in growth in the current year with continuing concern about inflation and a sudden increase in uncertainty about the global economy. The objective of the Eleventh Plan was faster and inclusive growth and the initiatives taken in the Eleventh Plan period have resulted in substantial progress towards both objectives. Inevitably, there are some weaknesses that need to be addressed and new challenges that need to be faced. Some of the challenges themselves emanate from the economy's transition to a higher and more inclusive growth path, the structural changes that come with it and the expectations it generates. There are external challenges also arising from the fact that the global economic environment is much less favourable than it was at the start of the Eleventh Plan. These challenges call for renewed efforts on multiple fronts, learning from the experience gained, and keeping in mind global developments. We focus on the backdrop of target setting and areas of focus of the Eleventh Plan. India entered the Eleventh Plan period (2007-2012) with an impressive record of economic growth. The vision for the Eleventh Plan prominently included an improvement in governance. Over the years, the governments at the Centre and the States have launched a large number of initiatives at substantial public expense to achieve the objectives of growth with poverty alleviation and inclusiveness. Experience suggests that many of these initiatives have floundered because of poor design, insufficient accountability and also corruption at various levels. Increasingly, there is demand for effective implementation without which expanded government intervention will be infructuous. The strategy for the Eleventh Plan was therefore aimed at bringing about major improvements in governance which would make government-funded programmes in critical areas more effective and efficient. The best possible way of achieving this objective may be by involving communities in both the design and implementation of such programmes, although such involvement may vary from sector to sector. For achieving the vision of the Eleventh Plan, it is extremely important to experiment with programme design to give more flexibility to decision making at the local level. It is especially important to improve evaluation of the effectiveness of how government programmes work and to inject a commitment to change their designs in the light of the experience gained. Evaluation must be based on proper benchmarks and be scientifically designed to generate evidence-based assessment of different aspects of programme design. Along with greater transparency and feedback from community participation, this is particularly important in the case of programmes delivering services directly to the poor. Accountability and transparency are critical elements of good governance. The Right to Information Act (RTI) enacted in 2005 empowers people to get information and constitutes a big step towards transparency and accountability.