PAPER 13 – Corporate Laws & Compliance

SECTION A

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

1. (a) Arun & Co., a proprietary firm of Arun, a Chartered Accountant in practice, has been appointed as statutory auditors for a private limited company. Subsequently it came to the light that Mrs. Arun has been holding less than 1% of the shares of that company. Will this vitiate the appointment of the statutory auditors? [2]

(b) A Public Limited Company with a paid up share capital of ₹3.00 crores and free reserves of ₹2.00 crores has not so far given any guarantee. Advise the company about the legal requirements under the Companies Act in respect of the following transactions:

(i) To give guarantee to a housing finance company in respect of ₹40 lakhs borrowed by the company's employees.
(ii) To give security to a finance company for a loan of ₹2 crores obtained by its subsidiary company. [4]

(c) A company 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, 2012 was duly registered with the Registrar of Companies. 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, 2012.
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 was a member's voluntary winding up? [5]

(d) Seema, a Registered Shareholder of Y Limited left her Share Certificates with her Broker A. Broker A forged the Transfer Deed in favour of Zia, accompanied by these Share Certificates lodged the Transfer Deed along with the Share Certificates with the Company for Registration. The Company Secretary, who had certain doubts, wrote to Seema informing her of the proposed transfer and in the absence of a reply from her (Seema) within stipulated time, registered the transfer of Shares in the name of Zia. Subsequently, Zia sold the Shares to Jima and Jima's name was placed in the Register of Shareholders. Later on, Seema discovered that forgery has taken place. State the remedy available to Seema and Zia in the given case. Explain. [4]

Answer 1(a):

According to section 226(3)(e), any person holding any security in the company carrying voting right is disqualified to be appointed as statutory auditor of the company.
In the given case, a proprietary firm i.e. Arun & Co. has been appointed as statutory auditor of a private company in which Mrs. Arun is holding shares. Since Mr. Arun himself is not holding shares in the company, his appointment as statutory auditor of the company will not be vitiated when it comes to the knowledge that Mrs. Arun is holding shares in the company. Percentage of shareholding is immaterial.

Answer 1(b):

In accordance with the provisions of section 372A, the Board of Directors of a public company can make inter-corporate loans, investments and provide securities and guarantees to the extent of 60% (sixty percent) of aggregate of its paid up capital and free reserves or 100% of free reserves, whichever is more, on its own. This limit can be exceeded with the prior approval of the members by a special resolution.

In the given case, the aggregate of paid up capital and free reserves is ₹5.00 crores. Thus, the Board can exercise powers upto ₹3.00 crores i.e., 60% of aggregate of paid up capital and free reserves.

(i) Provisions of section 372A are attracted in this case because the guarantee is to be provided to a body corporate.
(ii) Provisions of section 372A are attracted in this case also because exemption is available only when security or guarantee is provided for a wholly owned subsidiary company.

Assuming that the company does not have any existing inter-corporate loans, investments, securities and guarantees, both the proposals are within the powers of the Board of Directors itself and members prior approval by special resolution is not required. Thus, the decision shall be taken by the Board of Directors in its meeting with the consent of all the directors present therein.

Answer 1(c):

As per section 534, a floating charge created by the company within 12 months preceding the commencement of its winding up shall be invalid. However, this rule is subject to the following two exceptions:

(a) A floating charge shall not be invalid where it is proved that the company was solvent immediately after the creation of the charge.
(b) A floating charge shall be valid upto the amount of any cash paid to the company (whether at the time of creation of charge or thereafter) as a consideration for the charge. Also, interest shall be allowed on that amount at the rate of 5% per annum or such other rate as may be notified by the Central Government in the Official Gazette.

A company had created a floating charge of its assets in favour of a bank to secure a current account which was in debit. The bank advanced monies to the company subsequent to the creation of charge. The bank would not have advanced such monies if the company had not given the security (by way of creation of floating charge) to the bank. Therefore, it was held that money advanced to the company was in consideration of creation of charge, and so the charge was valid as it fell in the exception mentioned in section 534 [Re, Yeovil Glove Co. Ltd. (1962) 3 All ER 400].

The facts of the given case are exactly similar to the facts of the case discussed above. Therefore, it can be said that the floating charge created by the company on 1st January, 2012 shall be valid to the extent of ₹10 lakhs along with interest at the rate of 5% per annum or such other rate as may be notified by the Central Government in the Official Gazette.

Section 534 falls under Chapter V of Part VII of the Companies Act, 1956. The Title of said Chapter V reads, 'Provisions applicable to every mode of winding up'. Therefore, it is evident that section 534 shall apply notwithstanding that it is members' voluntary winding up or creditors' voluntary winding up.

Answer 1(d):

Liability of Company: Where a Company acts on a forged Transfer and removes the name of the real owner from the Register of Members, then –

(a) Restoring Name of Real Owner: It is bound to restore the name of the Real Owner on the Register, as the holder of the Shares, and to pay him any dividends which he ought to have received.

(b) Compensate Purchaser: It shall also be liable to compensate the Purchaser in so far as it had issued a Certificate of Transfer. The company is therefore stopped from denying the liability accruing from its own act.

If as a result of forged transfer, name of true owner of Shares is taken off the Register of Members, he can compel the Company to restore his name in the Register. He can also claim any dividend which may not have been paid to him during the intervening period **[Barton vs North Staffordshire Railways Company].**

Remedies available to Seema: Forged transfer is a nullity. So, the True Owner can – (a) have his/her name restored on the Register of Members, and (b) claim dividend, which may not have been paid to him/her during the intervening period.

Remedies available to Zia: The Company is liable to compensate the Purchaser Zia since it is stopped from denying the liability accruing from his own act. So, if Zia has suffered any loss, she can claim it from the Company in this case.

2. (a) Whether the name 'ABC Steel Bank Limited' is permissible for a Company carrying on business of manufacturers and Stockiest of Iron and steel? [2]

(b) One of the members of ABC Ltd. has proposed the name of Mr. Hugo for appointment as a Director of the Company in the Annual General Meeting and given a notice under Section 257 of the Companies Act, 1956. Mr. Hugo is one of the partners of the Hugo & Hugo, Chartered Accountants, who are the retiring auditors of the Company. But the audit of the Company is being looked after by another partner of the firm. Examine whether Hugo & Hugo can be reappointed as auditors, if Mr. Hugo is appointed as Director. [3]

(c) ABC Ltd. has 12 Directors on its Board and has the following clause in its Article of Association:
"The question arising at any meeting of the Board of Directors or any Committee thereof shall be decided by a majority of votes, except in cases where the Companies Act, 1956 expressly provides otherwise."
In one of the meeting of the Board of Directors of ABC Ltd., 8 Directors were present. After completion of discussion on a 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. It is clarified that the motion being voted up to was not concerning a matter which requires consent of all the Directors present in the meeting. [4]

(d) Mr. Fern, an Indian National desires to obtain foreign exchange for the following purpose:
(i) Payment of US$ 10,000 as commission on exports under Rupee State Credit Route.

(ii) US$ 30,000 for a business trip to U.K.

(iii) Remittance of US$ 2,00,000 for payment as prize money to the wining team in a Hockey Tournament to be held in Australia.

Advise him, if he can get the Foreign Exchange and under what conditions. [6]

Answer 2(a):

As per section 7 of the Banking Regulation Act, 1949,

Use of words "bank", "banker", "banking" or "banking company":

1. No company other than a banking company shall use as part of its name or in connection with its business any of the words "bank", "banker" or "banking" 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".
3. Nothing in this section shall apply to. —
   (a) a subsidiary of a banking company formed for one or more of the purposes mentioned in sub-section (1) of section 19, 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 under section 25 of the Companies Act, 1956 (1 of 1956).]

Hence, Company cannot have the name 'ABC Steel bank".

Answer 2(b):

According to section 226(3)(b) and (c), the following entities or persons have been declared disqualified to be appointed as an auditor of a company –

(b) an officer or employee of the company;

(c) a person who is a partner or who is in the employment of an officer or employee of the company;

Within the meaning of section 2(30), of the Act, director is an officer of the employee. Section 2(30) and Section 226(3)(b) and (c) read together indicate that if Mr. Hugo is appointed as director of the company then the firm where he is a partner i.e., Hugo & Hugo, cannot be appointed as statutory auditor of the company.

Answer 2(c):

As per Regulation 74 of Table A, except where the Act requires a unanimous resolution, questions arising at a Board meeting shall be decided by a majority of votes.

In the given case, the articles of ABC Ltd. contain a Regulation similar to Regulation 74 of Table A. The articles of ABC Ltd. state that a resolution shall be deemed to be passed in a Board meeting if it is approved by a majority of votes. In this regard, following points are worth noting:

(a) In a Board meeting, every director has one vote only.

(b) Only those directors who are present in the meeting and vote on a resolution are considered while determining majority, i.e., following directors are considered while ascertaining the result of a resolution:
   - A director who is absent at a Board meeting.
   - A director who abstains from voting.

In the given case, the company has 12 directors, out of which only 8 are present in the Board meeting. Out of 8 directors present, 3 directors have voted in favour, 2 directors have voted against the resolution, and 3 directors have abstained from voting. The directors absent in the Board meeting, and the directors present but abstaining from voting shall be ignored. The number of votes cast in favour of the resolution exceeds the number of votes cast against the resolution, and therefore the said resolution has been carried.

Following assumptions have been made in the above case:

(a) No director voting in favour of the resolution is interested in the resolution, as per the provisions of section 299.

(b) At least 4 disinterested directors are present in the Board meeting to form the quorum required at the time of passing the resolution (section 287 read with section 300).

(c) The resolution does not require consent of all the directors present in Board meeting (viz., in case of sections 316, 386 and 372A).

Answer 2(d):

Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction. However, the Central Govt. may in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Govt. has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The Rules stipulate some prohibitions and restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:

(i) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits payment of commission on exports under Rupees State Credit Route (except commission upto 10% of invoice value of exports of tea and tobacco). Therefore, payment of US $ 10,000 as commission on exports under Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

(ii) Prior approval of Reserve Bank of India is required for drawal of foreign exchange, exceeding US$ 25,000 by a person, irrespective of period of stay, for business travel. Therefore, Mr. Fern can obtain $ 30,000 with the permission of Reserve Bank of India. However, prior approval of the Reserve Bank of India shall not be required if drawal of additional US $ 5,000 is made out of funds held in Resident Foreign Currency (RFC) Account.

(iii) Drawal of foreign exchange exceeding US $ 1,00,000 for the purpose of remittance of prize money/sponsorship of sports activity abroad by a person other than International/ National/ State level sports bodies requires the prior approval of the Central Govt. In the given case, the drawal of US $ 2,00,000 for payment as prize money to the winning team in a Hockey Tournament to be held in Australia is organized by Mr. Fern, who is an Indian National (i.e., not any International, National or State level Sports Body). Therefore, Mr. Fern can obtain US $ 1,00,000 without any permission, but for drawal of additional US $ 1,00,000, prior approval of the Central Govt. is required. However, prior approval of the Central Govt. shall not be required if drawal of additional US $ 1,00,000 is made out of funds held in Resident Foreign Currency (RFC) Account.

3. (a) Mr. Baheti retired as a Member of Competition Commission of India (CCI) on 31st October, 2012. He was offered the post of Chief Executive in M/s. LED Ltd. which was earlier a party in the proceedings before CCI. Can he join the company with effect from 1st November, 2013?

What will be the position if Mr. Baheti joins Oil & Natural Gas Commission Ltd., a Government Company with effect from 1st April, 2013? ONGC was also earlier a party in the proceedings before CCI. [2]

(b) Mr. Bhanu was appointed as the managing director of Chandni Industries Ltd. for a period of five years with effect from 01.04.2010 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 01.03.2013. Mr. Bhanu 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. Bhanu pending settlement of his dues. Discuss whether:

(i) The company is bound to pay compensation to Mr. Bhanu, and, if so, how much.

(ii) The company can recover the amount of ₹5 lakhs paid on the ground that Mr. Bhanu is not entitled to any compensation, because he is guilty of corrupt practices. [3]

(c) The scheme of amalgamation was approved by overwhelming majority of the members of the merging companies, namely ABC Ltd. and XYZ Ltd. at meetings called as per directions of the Court. When the scheme of amalgamation was awaiting sanction of the Court, the exchange ratio was questioned by a small group of dissenting shareholders of ABC Ltd.

The exchange ratio was fixed by a firm of reputed Chartered Accountants. Examine with reference to the Court rulings, whether the dissenting shareholders will succeed.

Would your answer be different, if the exchange ratio was objected to by the Central Government and not by the members of the merging companies? [4]

(d) 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 initial public offer of 90,00,000 equity shares of ₹10 each at a premium of ₹5 per share, in July, 2012. The promoters acquired 10,00,000 shares on 1st January, 2008 and another 10,00,000 shares on 1st January, 2012 at face value.

(i) What should be the minimum contribution that should be made by the promoters of the above company in order to comply with the guidelines issued by SEBI?

(ii) State also the period for which the promoters are required to hold these shares and also the shares, if any, acquired by the promoters in excess of the required minimum contribution. [6]

Answer 3(a):

As per section 12, the Chairperson and other Members shall not, for a period of two years, accept any employment connected with the management or administration of any enterprise which has been a party to any proceeding before the Commission under this Act. However, the said restriction shall not apply where the Chairperson or any Member is offered an employment in a Government company as defined in section 617 of the Companies Act, 1956.

In the present case, M/s LED Ltd. is an enterprise which has been a party to any proceeding before the Commission. Therefore, Mr. Baheti cannot join M/s LED Ltd. upto 31st October, 2014 (i.e., upto 2 years of cessation of his office of member).

However, Oil & Natural Gas Commission Ltd. is a Government Company as defined in section 617 of the Companies Act, 1956, and so the restriction on employment of Chairman or a Member shall not apply where appointment is made in Oil & Natural Gas Commission Ltd. Therefore, Mr. Baheti can join Oil & Natural Gas Commission Ltd.

Answer 3(b):

As per section 318 –

- Compensation can be paid only to a managing director or whole time director.
- 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 company is not bound to pay compensation to Mr. Bhanu 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. Bhanu 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.

Answer 3(c):

On an application made to the Court for sanctioning a scheme of amalgamation or reconstruction, the Court may make an order sanctioning it. Once statutory formalities are complied with, the onus lies on those opposing the scheme to satisfy the Court that the scheme is unfair or unreasonable or fraudulent [Re, Hindustan General Electric Corporation Ltd. (1959) 29 Comp Cas 46; Re, Sussex Brick Co. Ltd. (1960) 30 Comp Cas 536].

Where, the valuation is confirmed to be fair by eminent firm of Chartered Accountants and is also approved by overwhelming majority, the Court will not find fault with the exchange ratio (Re, Tata Oil Mills Co. Ltd., Re, Hindustan Lever Ltd.).

Where the exchange ratio was fixed by two reputed firms of Chartered Accountants who had examined the accounts, annual reports, working results and financial positions of the two companies and certified on that basis that the share exchange ratio of 5:2 was fair and reasonable, and the scheme was widely advertised, unanimously approved and no objection was raised by any of the affected quarters, and the Central Government had not affirmatively established that the valuation of assets was unfair or inequitable, the Court refused to interfere (M. G. Investment & Industrial Co. Ltd. v New Shorrock Spg. & Mfg. Co. Ltd.).

Thus, if, on overall consideration the Court is satisfied as to feasibility of the scheme, it should not hesitate to grant sanction [Re, Ucal Fuel Systems Ltd.].

Applying the above Court rulings, the given problems are answered as under:

(a) The dissenting shareholders shall not succeed unless they satisfy the Court that the valuation is grossly unfair (Re, Piramal Spg. & Wvg. Mills Ltd.)

(b) Even if exchange ratio is objected by the Central Government, the Court may sanction the scheme, since the representation or opinion made by the Central Government to the Court under section 394A is not binding on the Court.

Answer 3(d):

Regulations 32 and 33 of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 contain the Regulations relating to promoters contribution, as explained below:

(A) Promoters contribution

1. As per Regulation 32, in case of an initial public offer, the promoters shall contribute not less than 20% of the post-issue capital.
   In the given case, the post-issue capital is calculated as under:

	₹
a) Pre-issue capital	3 crores
b) Public offer of shares (Share premium shall be excluded)	9 crores
Total (i.e. post-issue capital)	12 crores
Promoters contribution	2.4 crores

   As per Regulation 33, securities which have been issued to the promoters during the preceding 1 year, at a price lower than the price at which specified securities are being offered to public shall not be eligible for computation of promoters' contribution.

   Provided that nothing contained in this clause shall apply if promoters pay to the issuer, the difference between the price at which specified securities are offered in the initial public offer and the price at which the specified securities had been acquired.

   Following points are worth noting in the given case:

   (a) 10,00,000 shares allotted to the promoters on 1st January, 2008 shall be taken into account as promoters' contribution.

   (b) 10,00,000 shares allotted to the promoters on 1st January, 2012 shall not be taken into account as promoters' contribution (since these shares were allotted within preceding 1 year, at ₹10, i.e. less than ₹15 per shares as the issue price specified in the initial public offer). Accordingly, the promoters are required to subscribe for 14 lakh shares.

   However, if the promoters bring the difference of ₹50 lakhs (i.e. ₹ per share on 10,00,000 shares), then, 10,00,000 equity shares acquired by the promoters on 01.01.2012 shall also be eligible for computation of promoters' contribution. In such a case, the promoters are required to subscribe for 4 lakh shares only.

2. As per Sub-Regulation (4) of Regulation 26, promoters contribution shall be brought in before the issue is made. The entire promoters' contribution including premium shall be received at least 1 day prior to the issue opening date and kept in an escrow account with a scheduled commercial bank and should be released to the issuer only along with public issue proceeds.

   Accordingly, in the given case the promoters shall bring the entire promoters contribution (including premium) of ₹60 lakhs (being ₹40 lakhs towards share capital and ₹20 lakhs towards share premium) at least 1 day prior to the issue of the opening date (assuming that the promoters bring ₹50 lakhs in respect of the shares acquired by them on 01.01.2012).

(B) Lock-in Requirements

Regulation 36 of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 contains the Regulations relating to lock in period of promoters' contribution, as explained below:

1. The promoters contribution is subject to lock-in period of 3 years from the date of allotment.
   Accordingly, in the given case, the promoters cannot sell or transfer (except amongst promoters inter-se) the amount invested by way of promoters contribution.
2. Any contribution made by the promoters over and above the minimum contribution shall be subject to a lock in period of 1 year.

4. (a) Is it possible to re-register a private limited company to a public limited company and then back to a private limited company? Are there any restrictions? [3]

(b) XYZ Producer Company Limited was incorporated on 1st April, 2012. At present it has got 200 members and its Board consists of 10 directors. The Board of directors of the company seeks your advice on the following proposals:
Appointment of one expert director and one additional director by the Board for a period of four years. Advise the Board of directors explaining the relevant provisions of the Companies Act, 1956. [2]

(c) Write short note on management by administrator under The Insurance Act, 1938. [5]

(d) What is the effect of forfeiture of Shares by a Company? Does forfeiture absolve the Shareholder from all liabilities? [3]

(e) A Company wants to shift some of its objects from 'Other Objects' to the 'Main Objects'. State whether it is a permissible alteration. [2]

Answer 4(a):

Unlike the restriction imposed when a limited company intends to re-register as an unlimited company, there are no restrictions in law as to the number of times a private limited company can re-register as a public company and then re-register back to a private company.

However, the commercial justification for undertaking multiple re-registrations is something the board should consider very carefully. Depending on the number of shareholders in the company one may find it difficult to re-register on multiple occasions.

The intention to re-register as a public company may be to offer shares to the public and obtain a Listing or admission to trading on AIM or PLUS. Or it might be to gain a perceived degree of commercial respectability by having the status of a public company.

Re-registration back to a private company may be required if the company is acquired by another company or the directors feel there is no benefit in remaining a public company. There may also be legal reasons, for example if, following a court order confirming a reduction of capital, the nominal value of the allotted share capital falls below the authorised minimum (Sec.650). Re-registration can also be used to circumvent some of the more onerous obligations imposed on public companies. The cost implications involved in multiple re-registrations should be considered. For example, in preparing balance sheets and obtaining unqualified audit reports as required by Sec.92 of the Act when re-registering from private to public.

Answer 4(b):

As per section 581P, the Board may co-opt one or more expert directors or an additional director not exceeding 1/5th of the total number of directors. Further, every person shall hold the office of a director for a period not less than 1 year but not exceeding 5 years, as may be specified in the articles. The total number of directors in the present case is 10. The number of expert directors and additional directors shall not exceed 2. Therefore, it is permissible for the Board to appoint one expert director and one additional director for a period of four years.

Answer 4(c):

1) When Administrator for management of insurance business may be appointed [Section 52A]

1. If at any time the Authority has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, he may, after giving such opportunity to the insurer to be heard as he thinks fit, make a report thereon to the Central Government.
2. The Central Government, if it is of opinion after considering the report that it is necessary or proper to do so, may appoint an Administrator to manage the affairs of the insurer under the direction and control of the Authority.
3. The Administrator shall receive such remuneration as the Central Government may direct and the Central Government may at any time cancel the appointment and appoint some other person as Administrator.
4. The management of the business of the insurer shall as on and after the date of appointment of the Administrator vest in such Administrator, but except with the leave of the Authority the Administrator shall not issue any further policies.
5. As on and after the date of appointment of the Administrator any person vested with any such management immediately prior to that date shall be divested of that management.
6. The Authority may issue such directions to the Administrator as to his powers and duties as he deems desirable in the circumstances of the case, and the Administrator may apply to the Authority at any time for instructions as to the manner in which he shall conduct the management of the business of the insurer or in relation to any matter arising in the course of such management.

2) Powers and duties of the Administrator [Section 52B]

1. The Administrator shall conduct the management of the business of the insurer with the greatest economy compatible with efficiency and shall, as soon as may be possible, file with the Authority a report stating which of the following courses is in the circumstances most advantageous to the general interests of the holders of life insurance policies, namely:
   (a) the transfer of the business of the insurer to some other insurer:
   (b) the carrying on of its business by the insurer (whether with the policies of the business continued for the original sum insured with the addition of bonuses that attach to the policies or for reduced amounts);
   (c) the winding up of the insurer; and
   (d) such other course as he deems advisable.
2. On the filing of the report with the Authority, the Authority may take such action as he thinks fit for promoting the interests of the holders of life insurance policies in general.

3. Any order passed by the Authority under sub-section (2), shall be binding on all persons concerned, and shall have effect notwithstanding anything in the memorandum or articles of association of the insurer, or a company.

Answer 4(d):

Effects of Forfeiture:

1. On forfeiture of shares, member ceases to be a member of the company.
2. Liability of Ex-member

If the Company goes into liquidation	Liability of Ex-Members
(a) Within 1 year of forfeiture	He may be put on 'B' list of contributories
(b) After 1 year but within 3 years of forfeiture.	He may be held liable as an ordinary debtor but not as a contributor.

3. Reduction of Capital Forfeiture of shares results in reduction of capital unless the shares are reissued.
4. Forfeited shares become the property of the company.
5. The annual return must specify the total number of shares forfeited [Section 159].

Answer 4(e):

The Main Objects and Other Objects of the Company are stated under Part A and Part C respectively of the Object Clause of the MOA. A Company can change its Object Clause, only if it satisfies any of the circumstances mentioned u/s 17(1). In the instant case, the company desires to transform its objects from Part C to Part A. Such an alteration is not permissible u/s 17(1). [Mafatlal Consultancy Services (India) Ltd. In Re. CLB].

5. (a) State the duties of generating companies as per The Indian Electricity Act, 2003. [3]

(b) The Comptroller and Auditor General of India has appointed Shiva & Co. to conduct a supplementary audit of Shivani Ltd., a subsidiary of a Government company. Shivani Ltd., however, is of the opinion that the Comptroller and Auditor General has no power to authorise such audit, it being merely a subsidiary of the Government Company. Is the argument correct? Discuss. [3]

(c) At a General Meeting of Members, ABS Company Ltd passed an Ordinary Resolution to buy-back 30% of its Equity Share Capital. The Company's AOA empower the Company for buy-back of Shares. The Company further decides that the payment for buy-back be made out of the proceeds of the Company's earlier issue of Equity Shares. Explain the provision of Companies Act, 1956, and stating the sources through which the buy-back of Companies own Shares be executed. Examine –

A. Whether Company's proposal is in order.

B. Would your answer be still the same in case the Company instead of 30% decided to buy-back only 20% of its Equity Share Capital? [2]

(d) Miss Shaina already holds Directorships in 13 Public Ltd. Companies. She was appointed as Director in the following Public Ltd. Companies on the date given below:

Company	Date of appointment
A Ltd.	29.02.2012
B Ltd.	10.03.2012
C Ltd.	11.03.2012
D Ltd.	13.03.2012

A. Shaina did not choose the Directorships as required u/s 277. State the legal implications thereof.
B. What would be the position if the appointment in D Ltd were made on 18.03.2012?
C. What would be the position if the appointment in C Ltd. and D Ltd. were made on 28.03.2012?

[5]

(e) Yen 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 Govt. acquired the same for defence purposes. The company would not replace the land as the prices of land of other places were 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 operations (business) for 5 years and the prospects seemed gloomy? [2]

Answer 5(a):

Duties of Generating Companies [Section 10]

1. Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.
2. A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.
3. Every generating company shall -
   (a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;
   (b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.

Answer 5(b):

The given problem relates to sections 617 and 619 of the Companies Act, 1956, as discussed below:

As per section 617, Government Company means any company:

(a) in which not less than 51% of the paid up share capital is held:
   - by the Central Government; or

- by any State Government(s); or
- jointly by the Central Government and any State Government(s)

(b) which is a subsidiary of a Government company

As per section 619, the CAG has the power to appoint a person to conduct a supplementary or test audit of a company's accounts, if such company is a Government company.

In the given case, Shivani Ltd. is a subsidiary of a Government company. As per section 617, Shivani Ltd. is also a Government company.

Therefore, the order of the Comptroller and Auditor General of India to conduct supplementary audit of Shivani Ltd. is valid and is in order.

Thus, the argument of Shivani Ltd. is not valid.

Answer 5(c):

As per the Conditions for Buy-Back [SECTION 77A(2)]:

Company can Buy-Back to a maximum of 25% of Total Paid-up Capital and Free Reserves of the Company in a financial year, by passing Special Resolution.

Case A: Buy-Back of 30% is invalid as it exceeds the specified limit.

Case B: Buy-Back of 20% is within the limit of 25%, but should be approved by a Special Resolution, not Ordinary Resolution.

Answer 5(d):

New Appointments increasing Directorship [Sec. 277]:

Existing Directorship is 15. Appointment in one more company. [Sec. 277(1)]	Existing Directorship is less than 15. Fresh appointments in other Companies, taking the total beyond 15 [Sec. 277(2)]
(a) New appointment will not take effect unless, within 15 days of such appointment, the person vacates one of earlier Directorships. (b) The new appointment shall be void after 15 days, if the office is not so vacated.	**(a)** None of the new appointments will take effect unless within 15 days of the last appointment, the Director concerned chooses the 15 Directorships he wishes to continue. **(b)** All new appointments will become void, if the choice is not so made.

Situation A: Appointments in the 4 Companies are within 15 days period. Hence they constitute a batch of "new appointments". Sec 277(2) is applicable in this case. All appointments will become void, if the choice is not made u/s 277(2).

Situation B: Appointments made in B Ltd, C Ltd and D Ltd (i.e. within 15 days prior to the last date of appointment) constitutes "new appointments". Sec 277(2) is applicable in this case. Appointment in A Ltd is within the ceiling limit and is hence valid. Appointment in B, C, D Ltd become void, if the choice is not made u/s 277(2).

Situation C: Appointments in A Ltd and B Ltd and the next series of appointments in C Ltd and D Ltd are not a single series of "new appointments", as they are separated by more than 15 days. Appointments in A Ltd and B Ltd are valid, since the ceiling limit of 15 is not exceeded. For appointments in C Ltd and D Ltd, Sec. 277(1) is applicable. Appointments in C Ltd and D Ltd will be void if any of the existing Directorships (including A Ltd and B Ltd) is not vacated within 15 days of such appointments.

Answer 5(e):

(i) The court may refuse to grant winding-up 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. Similar decision was given under similar circumstances in the case of Murlidhar v. Bengal Steamship Co. Ltd. AIR 1920 Cal. 722.

(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. v. Registrar of Companies (1969) Comp. L.J. 290].

6. (a) The last three years' Balance Sheets of RBS Ltd. contains the following information and figures:

	As at 31.03.2010	As at 31.03.2011	As at 31.03.2012
	₹	₹	₹
Paid up Capital	50,00,000	50,00,000	75,00,000
General Reserve	45,00,000	50,00,000	60,00,000
Debenture Redemption Reserve	15,00,000	20,00,000	25,00,000
Secured Loans	10,00,000	15,00,000	30,00,000
Net Profit for the year*	12,50,000	19,00,000	34,50,000

(*as calculated in accordance with the provisions of section 349 and 350 of the Companies Act, 1956)

In the ensuing Board Meeting scheduled to be held on 5th November, 2012, among other items of agenda, following item is also appearing:

"To decide about borrowing from financial institutions on long-term basis."

Based on above information, you are required to find out as per the provisions of the Companies Act, 1956, the amount up to which the Board can borrow from financial institutions without seeking the approval in general meeting. [5]

(b) X Ltd., having paid up capital of ₹99 lacs, entered into an agreement for purchase of raw material worth ₹50 lacs with F Pvt. Ltd., in which 2 directors of the company are the directors, with the prior approval of the Board but before material could be supplied, the paid-up capital of the company became ₹1.50 crores. The company did not obtain approval of the Central Govt. even after the increase of paid-up capital. Decide whether there is any violation of section 297? [2]

(c) A director of a company repaid personal loans by withdrawing cheques from bank account of the company. In a suit filed by the company against the lender to recover the money the defendant claimed that the director is entitled to draw the cheques and that defendants were not bound to enquire into the validity of the payment. Discuss the validity of the suit by the company to recover the money. [2]

(d) "The Board meeting scheduled for Thursday, the 8th August, 2011 could not be held for want of quorum" - Advise the chairman of the company in this regard. [2]

(e) Certain Members of Vaani Company Limited having share capital feel that the affairs of the company are being mismanaged by Directors. Members therefore, decide to move the Company Law Board, complaining the mismanagement of company affairs by Directors of the Company. Examine the provisions of the Companies Act, 1956 and state:

(i) Whether members are entitled to complain the Company Law Board.

(ii) Whether the following acts of the Board of Directors amount to mismanagement:

(a) Continuation of Directors in their office after expiry of their tenure and infighting continues among them.

(b) Non-declaration of dividend when it does not lead to devaluation of shares.

[4]

Answer 6(a):

Borrowing from Financial Institutions:

Section 293(1)(d) provides that the Board of Directors of a public company may exercise borrowing powers on behalf of the company on its own provided existing as well as proposed borrowing does not exceed aggregate of the paid up capital and free reserves of the company. This aggregate borrowing does not include temporary borrowings from the company's bankers in the ordinary course of business.

This limit shall not be exceeded unless the Board has obtained prior approval of the members by an ordinary resolution for excess borrowing. Any such resolution, to be valid, shall prescribe maximum extent up to which the Board can borrow. In other words, any resolution of members without fixing the upper limit shall be void.

Since the decision to borrow is to be taken in a meeting to be held on 5th November, 2012, the figures relevant for this purpose are the figures as per the Balance Sheet as at 31.03.2012. According to the above provisions, the Board of Directors of RBS Ltd. can borrow, without obtaining approval of the shareholders in a general meeting, up to an amount calculated as follows:

Particulars	₹
Paid up capital	75,00,000/-
General Reserve (being free reserve)	60,00,000/-
Aggregate of paid up capital and free reserve	1,35,00,000/-
Total borrowing power of the Board of Directors of the company i.e., 100% of the aggregate of paid up capital and free reserves	1,35,00,000/-
Less amount already borrowed as secured loans	30,00,000/-
Amount up to which the Board of Directors can further borrow without the approval of shareholders in a general meeting.	1,05,00,000/-

Note: Debenture Redemption Reserve (This reserve is not to be considered as free reserve since it is kept apart for specific purpose of debenture redemption).

Assumption: The amount already borrowed as secured loans are not "temporary loans" obtained from the company's bankers in the ordinary course of business within the meaning of Explanation II to Section 293.

Answer 6(b):

Language of section 297 clearly suggests that the paid-up capital of the company is to be seen as on the date of making of contract and not when contract is executed. In the given case when contract is made out, paid-up capital of the company is ₹99 lacs only and for that prior approval of the Board is sufficient. Therefore, there is no violation of section 297.

Answer 6(c):

The directors owe a fiduciary to the shareholders. A director must act honestly and without negligence. He must not use the money of the company for his personal benefit.

A director of a company had repaid loans by withdrawing cheques from the bank account of the company. The lender of money contended that the director was entitled to draw the cheques and that the lenders were not bound to enquire into the validity of the payments. However, the material on record showed that the defendants had actual notice that the monies received were the property of the company and that in arranging the money, the directors had acted in breach of trust. It was held that the payments made were ultra vires and the directors had committed breach of trust [International Sales and Agencies Ltd. v Marcus (1982) 3 All ER 551].

The facts of the given case are identical to the facts of the above case, and thus it can be said that the lenders are liable to pay back the money to the company.

Answer 6(d):

In accordance with the provisions of section 288, where meeting could not be held for want of quorum, it gets adjourned automatically and unless the articles otherwise provide, the adjourned meeting is to be held in the next week on the same day, time and place provided it is not a public holiday otherwise next succeeding day which is not a public holiday.

In the given the adjourned meeting shall be held on 15th August but because of its being a public holiday the adjourned meeting is to be held on 16th August.

Answer 6(e):

(i) The members are not entitled to complain to the Company Law Board since relief is available only if the acts constituting mismanagement indicate a continuous wrong. Further, such acts must continue till the date of making the application.

In the present case, the members feel that the affairs of the company are being mismanaged by the directors. This in itself would not constitute a ground for invoking the provisions of section 398 unless it is proved that affairs of the company are being conducted prejudicial to the interest of the company or to public interest [Sheth Mohanlal

Ganpatram v Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd. (1964) 34 Comp Cas 777]. Mere loss of confidence does not amount to mismanagement.

(ii)

(a) Where the directors continue in their office even after expiry of their tenure and infighting continues among the directors, it would amount to mismanagement.

(b) Non-declaration of dividend does not amount to mismanagement, whether or not it results in devaluation of shares.

SECTION B

[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? [5]

(b) "In a highly competitive and surcharged environment, family-owned concerns are changing for the better."
In view of the above statement, discuss some of the factors responsible for such a change. [5]

(c) Mention the core elements of CSR Policy as per the CSR Voluntary Guidelines 2009. [5]

(d) Write short note on Triple Bottom Line Approach of Corporate Social Responsibility (CSR). [5]

(e) "The concept of Memorandum of Understanding (MoU) has been designed to provide flexibility and autonomy to CPSEs such that it facilitates them in pursuing the objectives and purposes, for which the enterprises have been set up."
In the light of the above statement, explain the concept of MoU in India. [5]

(f) State the advantages of Good Corporate Citizenship. [5]

Answer 7(a):

Corporate governance is:

- The system by which companies are directed and controlled - **The Cadbury Report, 1992.**
- The process of supervision and control intended to ensure that the company's management acts in accordance with the interests of shareholders - **Parkinson, 1994.**
- 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.

- **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.
- **Enhanced Investor Trust:** Investors consider Corporate Governance as important as financial performance when evaluating companies for investment.
- **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.
- **Better Access to Global Market:** Good Corporate Governance systems attracts investment from global investors, which subsequently leads to greater efficiencies in the financial sector.
- **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.
- **Accountability:** Investor relations' is essential part of good Corporate Governance. Investors have directly/indirectly entrusted management of the company for creating enhanced value for their investment.
- **Easy Finance from Institutions:** Evidence indicates that well-governed companies receive higher market valuations.
- **Reduced Risk of Corporate Crisis and Scandals:** Effective Corporate Governance ensures efficient risk mitigation system in place.

Answer 7(b):

1. **Market forces and competition force professionalisation:** Family concerns will turn professional in order to face successfully competition and market forces. This does not imply that family-owned business will come to an end, but the demarcation between ownership and control, on the one hand, and management on the other, will be much more evident.

2. **Independent directors will have a say:** Members of the board will be persons with technical and managerial capabilities "Who can guide and oversee operating management in the discharge of their functions". The boards will have a number of (upto 50 per cent) independent external directors who can advise, admonish and control operating management, without fear or favour, on issues of policy and performance.

3. **The topmen will not wear two hats:** The practice of one person combining in himself both the positions of Chairman and CEO will sooner rather than later, come to an end.

4. **Emergence of board committees:** Boards delegating specific tasks such as audit, remuneration and appointments to committees with members having professional expertise will be a normal phenomenon.

5. **Transparency in reporting and full financial disclosures:** Transparency in reporting and full disclosures will be norms. The board has to ensure adoption of appropriate accounting standards in the preparation of company's accounts and material changes during the financial year are fully discussed and justified.

6. **Independent and competent auditors will do their jobs:** Guidelines on corporate governance all over the world insist on independence of audit, and this will be observed by boards in India too. Boards will have to ensure unattached and professionally competent auditors to audit the company's accounts.

7. **Long term stakeholder interests will be ensured:** The highest priority of the boards would be to ensure long-term maximisation of shareholder value and wealth. Better corporate performance through legitimate and transparent policies will enrich shareholders. Accountability to shareholders does not mean, however, that other stakeholders such as customers and employees would have to be excluded, as the respective objectives are not naturally exclusive.

8. **Board's members' commitment ensured through adequate compensation:** Since boards will have to shoulder greater responsibility, bear risk and manage uncertainty with a great deal of pressure on them to perform, both from internal and external sources, their members would have to be compensated adequately and appropriately.

9. **Boards will be committed to corporate social responsibility:** Corporate social responsibility would become part and parcel of the duties of boards of directors. They who draw so much from the society in terms of resources, trained manpower, law and order, public health, infrastructure and well-developed markets to do their business and make profits, have a moral and social responsibility to share with the society at least a part of what they earn and gain, by their ethical practices and catering to the basic needs of communities they operate-in, supplementing wherever possible, the efforts of public authorities. "Corporates would have to provide demonstratable evidence of their concern for the issues that confront those constituencies.

10. **Whistle blower policy will be in place:** Companies would in due course put in place an appropriate whistle blower policy enabling both the board and senior management takes corrective measures to stem the rot, if any, in good time. Through SEBI under listing agreement (LA) with stock exchanges made whistle blower policy in the revised clause 49 non-mandatory, corporate governance advocates point out that sooner than later the Indian regulator would be prompted to make mandatory the whistle blower policy through which a company might establish a mechanism for employees to report to the management concerns about unethical behavior, actual or suspended fraud, or violation of the company's code of conduct or ethics policies.

Answer 7(c):

The CSR Policy should normally cover following core elements:

1. **Care for all Stakeholders**

   The companies should respect the interests of, and be responsive towards all stakeholders, including shareholders, employees, customers, suppliers, project affected people, society at large etc. and create value for all of them. They should develop mechanism to actively engage with all stakeholders, inform them of inherent risks and mitigate them where they occur.

2. Ethical functioning

Their governance systems should be underpinned by Ethics, Transparency and Accountability. They should not engage in business practices that are abusive, unfair, corrupt or anti-competitive.

3. Respect for Workers' Rights and Welfare

Companies should provide a workplace environment that is safe, hygienic and humane and which upholds the dignity of employees. They should provide all employees with access to training and development of necessary skills for career advancement, on an equal and non-discriminatory basis. They should uphold the freedom of association and the effective recognition of the right to collective bargaining of labour, have an effective grievance redressal system, should not employ child or forced labour and provide and maintain equality of opportunities without any discrimination on any grounds in recruitment and during employment.

4. Respect for Human Rights

Companies should respect human rights for all and avoid complicity with human rights abuses by them or by third party.

5. Respect for Environment

Companies should take measures to check and prevent pollution; recycle, manage and reduce waste, should manage natural resources in a sustainable manner and ensure optimal use of resources like land and water, should proactively respond to the challenges of climate change by adopting cleaner production methods, promoting efficient use of energy and environment friendly technologies.

6. Activities for Social and Inclusive Development

Depending upon their core competency and business interest, companies should undertake activities for economic and social development of communities and geographical areas, particularly in the vicinity of their operations. These could include: education, skill building for livelihood of people, health, cultural and social welfare etc., particularly targeting at disadvantaged sections of society.

Answer 7(d):

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

The people issues faced by the organization includes -

- Health

- Safety
- Diversity
- Ethnicity
- Education and literacy
- Prevention of child labour
- Differently-abled

The planet concerns include -
- Climate change
- Energy
- Water
- Air pollution
- Waste management
- Ozone layer depletion, etc.

The need to apply the concept of TBL is caused due to -
(a) Increased consumer sensitivity to corporate social behavior
(b) Growing demands for transparency from shareholders/stakeholders
(c) Increase environmental regulation
(d) Legal costs of compliances and defaults
(e) Concerns over global warming
(f) Increased social awareness
(g) Awareness about and willingness for respecting human rights
(h) Media's attention to social issues
(i) Growing corporate participation in social upliftment

While profitability is a pure economic bottom line, social and environmental bottom lines are semi or non-economic in nature so far as revenue generation is concerned but it has certainly a positive impact on long term value that an enterprise commands.
But discharge of social responsibilities by corporate is a subjected matter as it cannot be measured with reasonable accuracy.

Answer 7(e):

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

The concept of Memorandum of Understanding (MoU) has been designed to provide flexibility and autonomy to Central Public Sector Enterprises (CPSEs) such that it facilitates them in pursuing the objectives and purposes, for which the enterprises have been set up. Accountability has to be understood in a wider sense by associating it with answerability for the performance of the tasks and the achievement of targets negotiated mutually between the Government and the CPSE. The rationale for MoU could be derived from principal/agent theory. The principal (administrative ministry on behalf of real owners - the people) can only observe outcomes and cannot measure accurately the efforts expended by the agent (CPSE managers). Also the Principal can only, to a limited extent, distinguish the effects of influences from other factors, which affect the performance. Therefore extensive intervention by

administrators, who might not be too knowledgeable about the nature of problems confronting the enterprises, not only impacts productivity and profitability but also makes it impossible to fix accountability for non-achievement of targets.

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

In the backdrop of the dynamic external environment, "world- wide competition" and globalization, it is critical that the MoU system is strengthened such that it facilitates the CPSEs in becoming economically viable through efficient management and control. Hence, the MoU system aims at offering autonomy to CPSEs and is designed such that it can aid in the assessment of the extent to which mutually agreed objectives (Mandal, 2012) are achieved. This section of the report traces the evolution of the MoU system through various committee reports and highlights the major observations, along with the actions taken thereafter. This would act as an indicator of the developments that have happened in the MoU system in India and, through the study of extant literature, would also highlight the areas of concern raised after each study.

The various committees formed over the years are:

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

Answer 7(f):

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.

1. 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 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.

2. 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 workforce 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.
3. 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.
4. 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.
5. 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.
6. The internal activities of the organization have an impact on the external environment, since the society is an inter-dependent system.
7. 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.
8. The good public image secured by one organization by their social responsiveness encourages other organizations in the neighbourhood or in the professional group to adapt themselves to achieve their social responsiveness.
9. 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.
10. Companies can better address the grievances of its employees and create employment opportunities for the unemployed.
11. 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.
12. 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.
13. In a number of jurisdictions, governments have expedited approval processes for firms that have undertaken social and environmental activities beyond those required by regulation.