Paper-13: CORPORATE LAWS AND COMPLIANCE

SECTION - A
Answer Q No. 1 (Compulsory) and any 4 from the rest of Section A

Question 1:

(a) The issued, subscribed and paid-up share capital of Zeeshan Ltd. is ₹10 lakhs consisting of 90,000 equity shares of ₹10 each fully paid up and 10,000 preference shares of 10 each fully paid up. Out of members of company, 400 members holding one preference share each and 50 members holding 500 equity shares applied for relief under sections 397 and 398 of the Companies Act, 1956. As on the date of petition, the company had 600 equity shareholders and 5,000 preference shareholders.
Examine whether the above petition under sections 397 and 398 is maintainable. Will your answer be different, if preference shareholders have subsequently withdrawn their consent? [6]

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

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

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

(c) Rajesh, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai on 13.05.2014. He did not receive the shares certificates till14.09.2014. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to take action in the said matter. [4]

For part (a) & (b) 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:

(a)

As per section 399, in the case of a company having a share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:
(i) 100 members; or
(ii)1/10th of the total number of members; or
(iii)Members holding not less than 1/10th of the issued share capital of the company
It must be noted that the term member includes an equity shareholder as well as preference shareholder.
The consent to be given by shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by shareholder during the course of proceedings does not affect the maintainability of the application **[Rajahmundri electric Supply Corporation v Nageshwara Rao AIR 1956 SC 213].**
In the present case, the shareholding pattern of the company is as follows:
(i) ₹ 9,00,000 equity share capital held by 600 members

(ii) ₹ 1,00,000 preference share capital held by 5,000 members
(iii) ₹10,00,000 total share capital held by 5,600 members
The application alleging oppression and mismanagement has been made by the members as follows :

Number of members making the application:	
Preference shareholders	400
Equity shareholders	50
Total members	450

Amount of share capital held by the members making the application:

Preference share capital	4,000 (400 preference shares of RS. 10 each)
Equity share capital	5,000 (500 equity shares of Rs. 10 each)
Total capital	9,000

The application shall be valid if it has been made by the lowest of the following :
(i)100 members
(ii)560 members (being 1/10th of 5,600)
(iii) Members holding Rs. 1,00,000 share capital (being 1/10th of Rs. 10,00,000)
As is evident, the application made by 450 members meets the eligibility criteria specified under section 399, and therefore the application is maintainable.
Such application shall remain valid despite the fact that some of the applicants have subsequently withdrawn their consents **[Rajahmundri electric Supply Corporation v Nageshwara Rao AIR 1956 SC 213].**
It has been assumed that the members making the application have paid all the calls due on their shares.

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

(i) Both the India group and foreign groups are equally strong, and one is unable to oppress the other. As such, there may be a deadlock, but not oppression. It is not a case for winding up of the company and so relief under section 397 is not available [Gnanasambandam (CP) v Tamiland Transports (Coimbatore) Pvt. Ltd. (1971) 41 Comp Cas 26]. Thus, the contention of the Indian group that the foreign group is acting in a manner oppressive to the Indian group is not tenable.

(ii) The powers of the Company Law Board under section 397 are discretionary in character. Company Law Board may order the foreign group to buy out the minority group shareholding at the fair price with necessary permission as was held in Yashovardhan Saboo v Groz Beckert Saboo Ltd. (1993) 1 Comp LJ 20. However, where there was deadlock in the management of private limited company and both the parties failed to buy the other group, the company was wound up under just and equitable clause [Kishan Lal Ahuja v Surech Kumar Ahuja]. Thus, in the given case, if both the groups fail to exercise the option to buy the other group, Company Law Board may order the company to be wound up.

(c) According to section 56(4)(c) every company shall within one month from the application for the registration of transfer of any such shares, deliver the certificates to its shareholders.

In the case of **H.V. Jaya Ram v ICICI Ltd**. It was held that cause of action for failure to deliver share certificate arises where the registered office of the company is situated and not in the jurisdiction of the Court located in the place where the complaint resides. Accordingly in the

present case also, the Court in New Delhi cannot entertain the complaint against a company having its registered office in Mumbai.

Question 2:

(a) Smart Technologies Ltd. has been wound up and the Official Liquidator has been asked to take charge of the Company. Briefly explain the relevant provisions regarding filing of Statement of Affairs in relation to the Company in liquidation. [8]

(b) "Life Policy cannot be questioned after the expiry of 2 years from the date on which it was effected". Explain with reference to Section 45 of the act. [4]

(c) The object clause of the Memorandum of a company empowers it to carry on distillery business and any other business that is allied to it. The company wants to alter its Memorandum so as to include the cinema business in its objects clause. Advise the company. [3]

For part (a) 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:

(a)

Sec. 454 deals with Statement of Affairs to be made to Official Liquidator, in a compulsory winding - up. The provisions are summarized as under:

1. Situations:

A Statement of Affairs of the Company shall be made out and submitted to the Official Liquidator, where the Court has:
(a) made a winding-up order, or
(b) appointed the Official Liquidator as Provisional Liquidator.

2. Contents:

The Statement of Affairs shall be in the prescribed form, with the following particulars:
(a) Assets of the Company [Cash balance in Hand and at Bank, and Negotiable Securities, if any, held by the Company, should be separately stated]
(b) Debts and Liabilities of the Company,
(c) Names, Residences and Occupations of its Creditors, with break -up of Secured and Unsecured Debts, [In case of Secured Debts, particulars of securities given, whether by Company or an Officer thereof, their value and dates on which they were given, should be stated.]
(d) Debts due to the Company, and the Names, Residences and Occupations of the persons from whom they are due and the amount likely to be realised on account thereof,
(e) Such further or other information as may be prescribed, or as the Official Liquidator may require.

3. Verification:

The Statement shall submitted and verified (by an affidavit) by one or more Directors, Manager, Secretary or other Chief Officer of the Company, on the relevant date. Further, the Official Liquidator may require any of the following persons to verify the statement:
(a) Present or Past Officers of the Company,
(b) Persons who have taken part in the formation of the Company at any time within preceding 1 year,

(c) Present or Past Employees of the Company within preceding 1 year, and are, in the opinion of the Official Liquidator, capable of giving the information required,
(d) Present or Past Officers / Employees of any other Company, which is an Officer of the Company to which the statement relates.

4. Time Limit:
The statement shall be submitted within 21 days from the relevant date. The Official Liquidator or the Court may, for special reasons, extend this time upto 3 months.
Note: For this purpose, "Relevant Date" means:

Where Provisional Liquidator	Relevant Date
is appointed	Date of appointment of Provisional Liquidator
is not appointed	Date of winding-up order

5. Reimbursement of Cost:
Any person making, or concurring in making, the Statement and Affidavit u/s 454 shall be entitled to receive the costs and expenses incurred in preparation of the Statement. The amount, as considered reasonable by him, shall be paid by the Official / Provisional Liquidator, out of the assets of the Company.

6. Default:
Default in complying with Sec.454, without reasonable excuse, is punishable with imprisonment upto 2 years, and /or fine upto ₹1,000 for every day during which the default continues.

7. Inspection:
Any Creditor or Contributory shall be entitled to inspect the Statement of Affairs and to a copy thereof or extract there from, on payment of the prescribed fee. Any person untruthfully so stating himself to be a Creditor or Contributory shall be guilty of an offence u/s 182 of Indian Penal Code, and shall be punishable accordingly.

8. Application of Sec.454 to voluntary winding - up [Sec. 511A]:
Provisions of Sec. 454 shall, so far as may be, apply to every voluntary winding -up as they apply to winding-up by the Court except that reference to:
(a) the Court shall be omitted,
(b) the Official Liquidator or Provisional Liquidator shall be construed as reference to the Liquidator, and
(c) the "Relevant Date" shall be construed as reference to the date of commencement of winding- up.

(b)
Inaccurate or false particulars: An insurer shall not call in question a Life Insurance Policy after the expiry of 2 years from the date on which it was effected on the ground that –

(a) A statement made in the proposal for insurance, or
(b) In any report of a Medical Officer, or Referee, or Friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false. [Sec. 45]

Exception: The above provision does not apply if the Insurer shows that such statement was on –
(a) A material matter or suppressed facts which it was material to disclose, and
(b) That it was fraudulently made by the policy -holder, and
(c) That the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.
Only if all the 3 conditions are satisfied conjointly the insurer can repudiate after 2 years –**LIC Vs. G.M.Chennabasamma.**

LIC challenged a policy after 2 years after its issue. It was in evidence that the assured fraudulently suppressed facts. It was held that the LIC was not liable – **Mithoolal Vs. LIC (SC 1962).** Held that "If a period of 2 years has expired from the date on which the policy of life insurance was effected, that policy cannot be called in question by an insurer on the ground that a statement made in the proposal for insurance or on any report of a medical officer or referee, or a friend of the insured, or in any other document leading to the assure of the policy, was inaccurate or false." – **LIC Vs. Janaki Ammal (Mad HC 1968).**

Note:

(a) Policies issued in India shall be subject to law in force in India.
(b) The insurer can notify the Policyholder of the options available to him in case of non-payment of premiums.
(c) The Life Policy Holders have the right to seek for Medical Reports procured by the Insurer.

(c) Section 13 of the Companies Act, 2013 permits alteration of Memorandum by passing a special resolution to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company.
Thus section 13 does not prohibit a company to diversify in areas other than those specified in the Memorandum. But, the business sought to be added must be such which can conveniently or advantageously be combined with the business of the company.

The Punjab High Court in Punjab Distilling Industries Ltd. V. Registrar of Companies [1963] 83 Comp. Cas. 811 held that the cinema business could not be either conveniently or advantageously combined with the distillery business and, therefore, disallowed change of objects. Accordingly, alteration shall not be allowed.

Question 3:

(a) A Ltd. and B Ltd. both dealing in Chemicals and Fertilizers have entered into an agreement to jointly promote the sale of their products. A complaint has been received by the CCI stating that the agreement between the two is Anti-Competitive and against the interest of other in the trade. Examine what are the factors the CCI will take into account to determine whether the agreement in question will have any appreciable adverse effect on competition in the market. [5]

(b) Mr. Rahul was appointed as an Additional Director of Conservative Finance Ltd. w.e.f. 1st October 2013 in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next AGM of the Company was due on 31st March 2014 but the same was not held due to delay in the finalization of the accounts. Some of the Shareholders of the Company have questioned the validity of the appointment of Mr. Rahul and his continuation as Additional Director beyond 31st March 2014. Advise the Company on the complaints made by the Shareholders. [6]

(c) M/s XYZ Ltd. was incorporated on 1st January, 2012. On 1st November, 2014 a political party approaches the company for a contribution of ₹10 lakhs for political purpose. Advise in respect of the following:

(i) Is the company legally authorised to give this political contribution?
(ii) Will it make any difference, if the company was in existence on 1st October, 2011?
(iii) Can the company be penalised for defiance of rules in this regard? [4]

Answer:

(a)

For determining whether a Combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the CCI shall have due regard to all or any of the following factors:

i) Actual and potential level of competition through imports in the market,
ii) Extent of barriers to entry into the market,
iii) Level of combination in the market,
iv) Degree of countervailing power in the market,
v) Likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins,
vi) Extent of effective competition likely to sustain in a market,
vii) Extent to which substitutes are available or are likely to be available in the market,
viii) Market share, in the relevant market, of the persons or enterprise in a combination individually and as a combination,
ix) Likelihood that the combination would result in the removal of a vigorous and effective competitor(s) in the market,
x) Nature and extent of vertical integration in the market,
xi) Possibility of a failing business,
xii) Nature and extent of innovation,
xiii) Relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition,
xiv) Whether the benefits of the combination outweigh the adverse impact of the combination, if any.

(b) The given problem relates to sections 161 of the Companies Act, 2013.

The Legal Position Additional Directors

- The Board may appoint the additional directors in pursuance of the provisions of section 161.
- The Board may, in its discretion, appoint the additional directors whenever it deems fit.
- The appointment of additional directors can be made by the Board either by passing a resolution at a Board meeting or by passing a resolution by circulation.
- An additional director holds office upto the date of next annual general meeting. A director appointed as an additional director vacates his office, at the latest, on the last day on which the annual general meeting could have been called, and cannot continue in office thereafter on the ground that the meeting was not or could not be called within the time prescribed [Krishna Prasad Pilani v Colaba Land and Mills Co. (1959) 29 Comp Cas 273; Departmental Circular No. 8/3(260)/63-PR, dated 05.02.1963].

Director filling a casual vacancy

- The Board is authorised to fill a casual vacancy arising in the office of a director appointed in general meeting.
- The director filling a casual vacancy shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.
- A casual vacancy cannot be filled by passing a resolution by circulation.

The given case

- The Board has appointed Mr. Rahul as an additional director in a casual vacancy.
- The appointment of additional director has been made by passing a circular resolution.
- The last date for holding the annual general meeting was 31st March, 2014. The annual general meeting has not been held till 31st March, 2014.
- The issue raised in the given problem is:

  (a) Whether appointment of Mr. Rahul is valid or not; and

  (b) Whether Mr. Rahul can continue after 31st March, 2014.

Analysis of the case

1. Section 161 does not authorises the Board to appoint an additional director to fill the casual vacancy.

   - If appointment of Mr. Rahul is made as an additional director, then, such appointment cannot amount to filling a casual vacancy.
   - If Mr. Rahul is appointed to fill a casual vacancy, then he shall not be an additional director.
   - Thus, a combined reading of sections 260 and 262 makes it clear that the appointment of Mr. Rahul as an additional director to fill the casual vacancy is not possible at all.

2. Mr. Rahul has been appointed to fill the casual vacancy by passing a circular resolution. Since, the appointment of a director filling a casual vacancy requires passing of a resolution in a board meeting only, therefore, the appointment of Mr. Rahul is in contravention of section 161, and is therefore, invalid.

Conclusion

- The complaint made by the shareholders is valid.
- The appointment of Mr. Rahul is not valid since it is in contravention of sections 161.
- Mr. Rahul cannot continue as a director after the date of annual general meeting, since his very appointment is void ab initio.

(c) As per section 182, the following companies shall not make a political contribution:

(a) A Government company.

(b) A company which has been in existence for less than 3 financial years.

In the given case:

(i) M/s XYZ Ltd. cannot make any political contribution because the company is not in existence for a period of 3 financial years.

(ii) If XYZ were incorporated on 01.10.2011, it may make a political contribution as on 01.11.2014 because in such a case, it would have been in existence for 3 financial years. However, it shall comply with the following conditions:

(a) The amount of contribution shall not exceed 7.5% of average net profits during 3 immediately preceding financial years.

(b) The Board shall make a political contribution only by passing a resolution at a Board meeting.

(c) The company shall disclose in its profit and loss account the amount of political contribution and the name of the political party or the person to whom such amount has been contributed.

(iii) If a company makes a political contribution in contravention of section 182, following consequences shall follow:

(a) The company shall be punishable with fine which may extend to 5 times the amount so contributed.

(b) Every officer of the company who is in default shall be punishable with imprisonment up to 6 months and with fine upto 5 times the amount contributed.

Question 4:

(a) 'A' commits forgery and thereby obtains a certificate of transfer of shares from a company and transfers the shares to 'B' for value acting in good faith. Company refuses to transfer the shares to 'B'. Whether the company can refuse? Decide the liability of 'A' and of the company towards 'B'. In the light of the above state the meaning and consequences of a forged transfer. [6]

(b) What is a Nidhi company? Explain the procedure to incorporate a Nidhi company. [4]

(c) Sunflower Ltd. decided to terminate the services of Mr. Dinesh, who was employed as Sales Manager. However, the Company feels that the Sales Manager may not vacate the Company's flat at Mumbai. What action can be taken by the Company under the Companies Act, to regain possession of the flat? Is it necessary to take such action under the Act before terminating the services of Mr. Dinesh? Will it make any difference, if the flat is not owned by the Company, but taken on lease? [5]

For part (b) 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:

(a) Any forged transfer does not give the transferee concerned any title to the shares.

Although the innocent purchaser acting in good faith could validly and reasonably assume that the person named in the certificate is the owner of the shares. Still the illegality cannot be converted into legality.

Therefore, in this case company is right to refuse to do the transfer of the shares in the name of the transferee B.

Forged Transfer

Meaning:

- Forged Transfer means, transfer of shares made on the basis of forged transfer deed.
- The instrument of transfer is said to be forged when transferor's signatures bearing on it are forged.
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Consequences of Forged Transfer:

1. Restoration of name of: True owner can compel the company to restore his name to the register.

2. Claim to Dividend: True owner can also claim any dividend which may not have been paid to him during the intervening period.

3. Right of Bona fide Purchaser:

- If the company had issued a share certificate to the transferee on a forged transfer and he further sold them to another buyer who has acted in good faith, then the purchaser will have no right to be registered as shareholder.
- However, he can claim damages from the company on the ground since he has acted on the faith of the share certificate issued by the company.
- Company in turn can claim damages from the person who has submitted said forged transfer deed to it.

(b)

Nidhi company according to Section 620A of Companies Act 1956 means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi. Nidhi Companies are Companies notified by the Central Government as such under Section 620A of the Companies Act, 1956. These Companies mainly engage in the business of collecting deposits in the form of Savings Deposit, Recurring Deposit etc. And also lend the same to the members of the Company. One of the important feature of a Nidhi Company is that it deals only with members (share holders). Thus if you want to deposit any amount in a Nidhi Company or want to avail a loan from a Nidhi Company, first you have to become a member by subscribing to shares of the Company.

The present procedure to incorporate a Nidhi company is as follows:

- Name of the Company: To get approval of the name by which the company will be known. The promoters propose three names to ROC. After verification the ROC is able to either identify one name or else calls for a panel of fresh names. Following this exercise a name is finally allotted by ROC to the promoters which will be used as the name of the company. But the word „Nidhi" cannot be used as a part of the name at this stage.
- Submission of MOA & AOA: The promoters submit the Memorandum and Articles of Association to ROC who after examination registers the company and issues a Certificate of Incorporation.
- Submission of other documents: The company submits to the ROC documents such as a Statement in lieu of Prospectus, declaration by the promoters etc., specified under Section 149 of the Companies Act. ROC registers these documents after corrections if any and issues a Certificate of Commencement of Business.

At this stage there is no stipulation as to the membership strength of the company nor any restriction regarding capital for doing business. The company can receive deposits and lend without any restriction on rates of interest and for any period of time. Consequently, the functioning of such companies is not restricted or supervised by the authorities.

(c) The given problem relates to sec. 630 of the Companies Act.

As per sec. 630, if any Officer or Employee of a Company:

(a) Wrongfully obtains possession of any property of a Company, or

(b) Having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the AoA and authorized by the Act.

On the complaint of the Company or any Creditor/Contributory, he shall be punishable with fine upto `10,000.

The court trying the offence may also order such Officer/Employee to deliver up or refund, within a specified time, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term upto 2 years. [Sec. 630(2)].

In the given case,

1. **Right of Company:** The Company or any Creditor/Contributory, can file a suit u/s 630 against the Sales Manager, if he refuses to vacate the premises provided by the Company. The Court trying the offence may also order such Officer/Employee to deliver up or refund, within a specified time, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term upto 2 years.
2. **Employees include Past Employees also:** In the above case, it is possible to initiate action even after termination of services of Mr. Dinesh.

The term "Officer or Employee" in section 630 applies to both the existing and past Officers or Employees if such Officers or Employees either: (a) wrongfully obtain possession of any property of the Company, or (b) having obtained such property during the course of employment, withhold the same after termination of employment. [Baldev Krishna Sahi Vs. Shipping Corporation of India Ltd. (SC)].

3. **Action permissible for Leasehold Property:** It is not necessary that the property in question should be owned by the company. Even if the Company exercises only a leasehold right, the provisions of Sec. 630 can be invoked. [P.V.George Vs. Jayems Engineering Co (P) Ltd.]

Question 5:

(a) Is the Central Government empowered to supersede the Authority under Insurance Regulatory & Development Authority Act, 1999? Explain. [5]

(b) At an annual general meeting of your company, one of the directors being badly heckled by irate shareholders had tendered his resignation orally which was accepted by the majority of members present at the meeting. Can the director continue in his office after the annual general meeting? [4]

(c) Mr. Bipin goes abroad for four months from 4.4.2014 and an alternate director has been appointed in his place. Advice as to sending of notice as required under section 173(3). [3]

(d) The Directors of Technosoft Industries Ltd, registered in Calcutta, propose to hold the next Board Meeting in May 2014. They seek your advice in respect of the following matters –

- **(i) Can the Board Meeting be held in Chennai, when all the Directors of the Company reside at Calcutta?**
- **(ii) Can the Board meeting be called on a Public Holiday and that too after business hours as majority of the Directors of the Company have gone to Chennai on vacation?**
- **(iii) Is it necessary that the notice of the Board meeting should specify the nature of business to be transacted?**

Advise with reference to the relevant provisions of the Companies Act, 2013. [3]

Answer:

Section 19 empowers the Central Government to supersede the Authority. These provisions may be explained as follows:

1. Reasons for supersession [Section 19(1)] The Central Government may supersede the Authority if it is of the opinion:
(a) That, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or
(b) That the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or
(c) That circumstances exist which render it necessary in the public interest to supersede the Authority.

2. Conditions for making an order of supersession [Section 19(1) and Proviso to Section 19(1)]
(a) The Central Government shall be required to issue a notification stating therein the reasons for supersession and the period of supersession, which shall not exceed 6 months.
(b) Before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.
(c) The Central Government shall appoint a person to be the Controller of Insurance under section 2B of the Insurance Act, 1938, if not already done.

3. Effects of supersession [Section 19(2)] Upon the publication of notification under sub-section (1) superseding the Authority, -
(a) the Chairperson and other members shall, as from the date of supersession, vacate their offices as such;
(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under subsection (3), be exercised and discharged by the controller of Insurance; and
(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

4. Reconstitution of Authority [Section 19(3)] On or before the expiration of the period of supersession specified in the notification issued under subsection (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for reappointment.

5. Laying of documents before the Parliament [Section 19(4)] The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

(b) The Companies Act 2013 provides for Directors Resignation under section 168. This section provides as follows :

A director may resign from his office by giving a notice in writing to the Company. Notice should be given to the company and not to any third party, say, Creditors.

Resignation of director shall take effect from later of the following date(s), i.e., whichever is later –

(a) Date on which the notice is received by the company, or

(b) Date, if any, specified by the director in the notice.

The board has no power to refuse the resignation of a director unless the AOA of the company contains a provision to this effect. [Re. Neokrantine Safety Explosives Co of NSW Ltd.].

As such resignation does not require acceptance, except in the following situations –

(a) Where the AOA does not permit a director to resign at any time, or stipulates that acceptance of a resignation is a must for it to take effect.

(b) Resignation letter explicitly states that it will take effect only upon acceptance by the company.

(c) When the tenor of the resignation letter is such that it requires acceptance.

In these cases, the resignation will be effective only when notice is served on the company/board, and resignation is accepted.

Thus, in the given case the director who had orally tendered the resignation at an annual general meeting cannot be relieved and he has to continue in his office.

(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. Bipin Ram, who is outside of India, shall be served at their addresses registered with the company.

(d)

Unlike section 96, there is no provision which requires that a Board meeting shall be held -

(a) only on a day that is not a public holiday;

(b) only at the registered office of the company or at any other place within the city, town or village in which the registered office of the company is situated;

(c) only during business hours.

The answer to the given problem is as under:

A. Section 96 requires that an annual general meeting shall be held only at the registered office of the company or at any other place within the city, town or village in which the registered office of the company is situated. However, there is no similar provision in respect of holding of a Board Meeting. As such, a Board Meeting can be held anywhere in India or even outside India.

B. As per section 174, if a Board meeting could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned to the same day, time and place in the next week, or if that day is a national holiday, then to next succeeding day, which is not a national holiday. It means that an adjourned Board meeting can be held only on a day which is not a national holiday. However, there is nothing in the Act

which prohibits the holding of an original Board meeting on a national holiday. Similarly, the Act does not require that a Board meeting shall be held only during business hours. However, the articles of the company may provide otherwise.
In the instant case, the directors intend to hold a Board meeting on a national holiday and after business hours. Unless the articles of the company provide otherwise, holding a Board meeting on a national holiday and after business hours is permissible.

C. No form or contents of notice has been specified by the Act. Agenda of a Board meeting is not required to be sent along with the notice of a Board meeting unless the Act requires a specific notice to move a resolution at a Board meeting.

Therefore, the notice of Board meeting need not specify the nature of business to be transacted, unless the articles otherwise require.

Question 6:

(a) The Board of Directors of M Limited propose to donate ₹3,00,000 to a school established exclusively for the benefit of children of employees and also donate ₹50,000 to a political party during the Financial year ending 31st March, 2015. The average net profits determined in accordance with the provisions of Sections 198 of the Companies Act, 2013 during the three immediately preceding financial years is ₹40,00,000.
Examine with reference to the provisions of the Companies Act, 2013 whether the proposed donations are within the powers of the Board of Directors of the Company. [5]

(b) M/s ABC Ltd. had power under its memorandum to sell its undertaking to another company having similar objects. The Articles of the company contained a provision by which directors were empowered to sell or otherwise deal with the property of the company. The Shareholders passed an ordinary resolution for the sale of its assets on certain terms and required the directors to carry out the sale. The Directors refused to comply with the wishes of the shareholders where upon it was contended on behalf of the shareholders that they were the principal and directors being their agents were bound to give effect to their decision. Based on the above facts, decide the following issues, having regard to the provisions of the Companies Act, 2013 and case laws.

(i) Whether the contention of shareholders against the non-compliance of their wishes by the directors is tenable.
(ii) Can shareholders usurp the powers which by the articles are vested in the directors by passing a resolution in the general meeting? [6]

(c) Board of Directors of M/s. ABee 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 Board of Directors can do so. [4]

Answer:
(a)
Charitable Contribution

A contribution by a company is said to be charitable contribution if it is made without any object of availing any benefit for the company or for its employees and the object of contribution does not have any direct relation with the business of the company. In the given case contribution is to be made for the school which is exclusively for the benefit of the

employees' children. Therefore, it cannot be considered as charitable contribution within the meaning of section 181. It is purely a business decision and the Board of Directors of the company is empowered to take such a decision.

Political Contribution

Limit of political contribution

As per section 182, an eligible company can make political contribution up to 7.5% of average net profit of immediately preceding three financial years, in a financial year.

In the given case, average net profit of the company during preceding three financial years is ₹40,00,000. The Board is empowered to make political contribution to the tune of ₹3,00,000 being 7.5% of the average net profit of preceding three years. Since the political contribution proposed is only `50,000, it is well within the powers of the Board to make this contribution.

Procedure

Every political contribution is required to be approved only in a Board meeting by way of a resolution and full disclosure of the name of political party and amount contributed shall be made in the profit and loss account.

(b) The Board has the absolute power to do all things other than those that are expressly required to be done by the company in general meeting **(Section 179).**

As per section 180(1)(a), without the prior consent of the shareholders in general meeting, Board shall not sell, lease or otherwise dispose of the whole, or substantially the whole, of one or more undertakings of the company. The section has been framed negatively; it states that Board shall not exercise such power without the concurrence of the shareholders in general meeting. It does not imply that a consent or even a direction by the shareholders would make it obligatory on the Board to exercise such power.

The power to sell the assets of the company is vested in the Board of directors. If in the opinion of the Board, it is not in the best interest of the company to sell its assets, the Board is not bound to do so, notwithstanding the fact that the company in general meeting has resolved that the assets should be sold **[Pothen v Hindustan Trading Corpn. (P) Ltd. (1967) 37 Comp Cas 6 (Ker)].**

The given problem is answered as follows:

(i) The Board is the supreme body having the management of the company. The Board has the absolute power to do all things except those that are expressly required to be done by the company in general meeting. The shareholders cannot interfere in the day to day management of the company. The shareholders cannot supersede or usurp the Board's powers, or instruct it as to how it shall exercise its powers.

Also, as per Sec. 180, the power to sell, lease or otherwise dispose of any undertaking of the company is vested with the Board, though the Board can exercise such power only with the consent of the shareholders in general meeting. Thus, it is evident that a direction by the shareholders does not make it obligatory for the Board to exercise such power.

If in the opinion of the Board, it is not in the best interest of the company to sell its assets, the Board is not bound to do so, notwithstanding the fact that the company in general meeting has resolved that the assets should be sold **[Pothen v Hindustan Trading Corpn. (P) Ltd.].**

Thus, the contention of the shareholders is not tenable.

(ii) The powers of management are vested in the Board of directors; the Board alone can exercise such powers. Even a unanimous resolution of the shareholders will not enable the shareholders to exercise the powers of the Board. The shareholders cannot interfere in the day to day management of the company. Thus, the shareholders cannot usurp the powers vested in directors.

(c)

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].

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.

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

Question 7:

(a) What is the role of SEBI in promoting Corporate Governance?

(b) What is Project Governance? What are the benefits of Project Governance?

(c) "Corporate Social Responsibility is to be considered as an investment and not as a charity" – Discuss.

(d) "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.

(e) What is Corporate Citizenship? Is this fundamentally different from Corporate Social Responsibility?

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

[5×5]

Answer:

(a) The role of SEBI in promoting Corporate Governance:

Good Governance in capital market has always been high on the agenda of SEBI. This is evident from the continuous updation of guidelines, rules and regulations by SEBI for ensuring transparency and accountability. In the process, SEBI had constituted a Committee on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla.

Based on the recommendations of the Committee, the SEBI had specified principles of Corporate Governance and introduced a new clause 49 in the Listing agreement of the Stock Exchanges in the year 2000. These principles of Corporate Governance were made applicable in a phased manner and all the listed companies with the paid up capital of ₹3 crores and above or net worth of ₹25 crores or more at any time in the history of the company, were covered as of March 31, 2003.

SEBI, as part of its endeavour to improve the standards of corporate governance in line with the needs of a dynamic market, constituted another Committee on Corporate Governance under the Chairmanship of Shri N. R. Narayana Murthy to review the performance of Corporate Governance and to determine the role of companies in responding to rumour and other price sensitive information circulating in the market in order to enhance the transparency and integrity of the market.

With a view to promote and raise the standards of Corporate Governance, SEBI on the basis of recommendations of the Committee and public comments received on the report and in exercise of powers conferred by Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with section 10 of the Securities Contracts (Regulation) Act 1956, revised the existing clause 49 of the Listing agreement vide its circular SEBI/MRD/SE/31/2003/26/08 dated August 26, 2003. It clarified that some of the sub -clauses of the revised clause 49 shall be suitably modified or new clauses shall be added following the amendments to the Companies Act 1956 by the Companies (Amendment) Bill/Act 2003, so that the relevant provisions of the clauses on Corporate Governance in the Listing Agreement and the Companies Act remain harmonious with one another.

(b) Project Governance extends the principle of Governance into both the management of individual projects via Governance structures, and the management of projects at the business level, for example via Business Reviews of Projects. Today, many organisations are developing models for 'Project Governance Structures', which can be different to a traditional Organisation Structure in that it defines accountabilities and responsibilities for strategic decision-making across the project. This can be particularly useful to project management processes such as change control and strategic (project) decision-making. When implemented well, it can have a significantly positive effect on the quality and speed of decision making on significant issues on projects.

Benefits of Project governance:

Project governance will:

i) Outline the relationships between all internal and external groups involved in the project.
ii) Describe the proper flow of information regarding the project to all stakeholders.
iii) Ensure the appropriate review of issues encountered within each project.
iv) Ensure that required approvals and direction for the project is obtained at each appropriate stage of the project.

(c) The originally defined concept of CSR needs to be interpreted and dimensionalised in the broader conceptual framework of how the corporate embed their corporate values as a

new strategic asset, to build a basis for trust and cooperation within the wider stakeholder community.

Though there have been evidences that record a paradigm shift from charity to a long-term strategy, yet the concept still is believed to be strongly linked to philanthropy. There is a need to bring about an attitudinal change in people about the concept.

By having more coherent and ethically driven discourses on CSR, it has to be understood that CSR is about how corporates place their business ethics and behaviors to balance business growth and commercial success with a positive change in the stakeholder community.

Several corporates today have specific departments to operationalise CSR. There are either foundations or trusts or a separate department within an organisation that looks into implementation of practices.

Being treated as a separate entity, there is always a flexibility and independence to carry out the tasks

But often these entities work in isolation without creating a synergy with the other departments of the corporate. There is a need to understand that CSR is not only a pure management directive but it is something that is central to the company and has to be embedded in the core values and principles of the corporate.

Whatever corporates do within the purview of CSR has to be related to core business. It has to utilise things at which corporates are good; it has to be something that takes advantage of the core skills and competencies of the companies. It has to be a mandate of the entire organisation and its scope does not simply begin and end with one department in the organisation.

Charity means the act of donating money, goods, time or effort to support a charitable cause in regard to a defined objective. Charity can be equated with benevolence and charity for the poor and needy. It can be any selfless giving towards any kind of social need that is not served, underserved, or perceived as unserved or underserved. Charity can be by any individual or by a corporate.

Corporate Social Responsibility is about how a company aligns their values to social causes by including and collaborating with their investors, suppliers, employees, regulators and the society as a whole. The investment in CSR may be on people centric issues and/or planet issues. A CSR initiative of a corporate is not a selfless act of giving; companies derive long-term benefits from the CSR initiatives and it is this enlightened self interest which is driving the CSR initiatives in companies.

(d) 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)

(e) A new terminology that has been gaining grounds in the business community today is Corporate Citizenship. Corporate citizenship is defined by the Boston College Centre for Corporate Citizenship, as the business strategy that shapes the values underpinning a company's mission and the choices made each day by its executives, managers and employees as they engage with society.

According to this definition, the four key principles that define the essence of corporate citizenship are:

(i) Minimise harm,
(ii) Maximise benefit,
(iii) Be accountable and responsive to key stakeholders and
(iv) Support strong financial results.

Corporate citizenship, sometimes called corporate responsibility, can be defined as the ways in which a company's strategies and operating practices affect its stakeholders, the natural environment, and the societies where the business operates. In this definition, corporate citizenship encompasses the concept of corporate social responsibility (CSR), which involves companies" explicit and mainly discretionary efforts to improve society in some way, but is also directly linked to the company's business model in that it requires companies to pay attention to all their impacts on stakeholders, nature, and society. Corporate citizenship is, in this definition, integrally linked to the social, ecological, political, and economic impacts that

derive from the company's business model; how the company actually does business in the societies where it operates; and how it handles its responsibilities to stakeholders and the natural environment.

Thus, corporate citizenship, similar to its CSR concept, is focusing on the membership of the corporation in the political, social and cultural community, with a focus on enhancing social capital. Notwithstanding the different terminologies and nomenclature used, the focus for companies today should be to focus on delivering to the basic essence and promise of the message that embodies these key concepts –CSR and Corporate Citizenship.

Corporate Social Responsibility is not a fad or a passing trend, it is a business imperative that many Indian companies are either beginning to think about or are engaging with in one way or another.

While some of these initiatives may be labeled as corporate citizenship by some organisations, there basic message and purpose is the same.

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

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

The planet concerns include

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

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

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

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