

## P 13 – Corporate Laws & Compliance

### Case study 1

Mr. Z is a director of XYZ Limited which failed to repay matured deposits from 1<sup>st</sup> April, 2012 onwards and the default continues. But ABC Limited is regular in filing annual accounts and annual returns. Mr. A is also a director of PQR Limited and XYZ Limited.

Answer the following questions with reference to the relevant provisions of the Companies Act, 1956:

- (i) Whether Mr. A is disqualified under section 274(1)(g) of the Companies Act, 1956 and if so, whether he is required to vacate his office of director in PQR Limited and XYZ Limited.
- (ii) Is it possible for Board of directors of DEF Limited to appoint Mr. A as an additional director at the Board meeting to be held on 15<sup>th</sup> May, 2013?

Would your answer be different if Mr. A ceased to be a director of ABC Limited by resignation on 1<sup>st</sup> March, 2013? State also the auditor's liability with regard to reporting of disqualification under section 274(1)(g).

### Case study 2

In ABC Ltd. three Directors were to be appointed. The item was included in agenda for the Annual General Meeting scheduled on 30<sup>th</sup> September, 2013, under the category of 'Ordinary Business'. All the three persons as proposed by the Board of Directors were elected as Directors of the company by passing a 'single resolution' avoiding the repetition (multiplicity) of resolution. After the three directors joined the Board, certain members objected to their appointment and the resolution. Examine the provisions of Companies Act, 1956 and decide

- (i) Whether the contention of the members shall be tenable and whether both the appointment of Directors and the single resolution passed at the Company's Annual General Meeting shall be void.
- (ii) What would be your answer in case the company in question is an "Association not for Profit" incorporated under Section 25 of the Companies Act, 1956?

### Case study 3

Madhurima Ltd is a Public Limited Company. It has a Paid Up Share Capital of `11 Crores. It is engaged in software development for export. It was promoted by Mr. Sharat, who is an NRI (a Foreign Resident of Indian origin), and his friend Mr. Mohan, who is an Indian Citizen resident in India.

Currently, Mr. Mohan is heading the Company in India as the President. However, Mr. Sharat is the main business strategy formulator, and also actively renders several services outside India to the Company, and also advises the Board of Directors of the Company. But he is stationed in the USA and visits India for hardly 15 days a year.

The Company desires to know from you, whether they can appoint Mr. Sharat, as the "Managing Director", to comply with Sec. 269 of the Companies Act, and pay him a salary in foreign exchange. They also desire that you advise them as to whether the said appointment can be made in terms of FEMA, 1999. Give a reasoned answer, duly supported by analysis of the relevant legal provisions applicable to the issue in question.

#### Case study 4

Mr. J, Mr. B, Mr. V and Mr. R are the directors of John Brown and Company Limited. Mr. V and Mr. R did not attend the board meeting which was properly convened. At the said board meeting two additional directors were appointed. They are wives of Mr. J and Mr. B respectively, the directors who attended the Board meeting. Explain with reference to the relevant provisions of the Companies Act, 1956 whether the directors who attended the Board meeting are entitled to vote on the subject matter and whether the appointment of additional directors is valid.

#### Case study 5

M/S Aman Hospital Private Ltd. has two groups of Directors. A dispute arose between the two groups out of which one group controlled the majority of shares. A very serious situation arose in the administration of the company's affairs when the minority group ousted the lawful Board of Directors from the possession and control of the management of the company's factory and workshop. Books of account and statutory records were held by the minority group and consequently the annual accounts could not be prepared for two years. The majority group applied to the CLB under sections 397 and 398 of the Companies Act. You are required to decide with reference to the provisions of the said Act, the following issues:

- (i) Can majority of shareholders apply to the Company Law Board for relief against the oppression by the minority shareholders?
- (ii) Whether Company Law Board can grant relief in such circumstances.

#### Case study 6

M/s Kia Overtrading Ltd. was ordered to be wound up compulsorily by an order dated 15<sup>th</sup> October, 2012 of the Delhi High Court. The official liquidator who has taken control of the assets and other records of the company has noticed the following:

- (i) The Managing Director of the company has sold certain properties belonging to the company to a private company in which his son was interested causing loss to the company to the extent of ` 60 lakhs. The sale took place on 10<sup>th</sup> May, 2012.
- (ii) The company created a floating charge on 1<sup>st</sup> January, 2012 in favour of a private bank for the overdraft facility to the extent of ` 5 crores, by hypothecating the current assets viz., stocks and book debts.

Examine what action the official liquidator can take in this matter having regard to the provisions of the Companies Act, 1956.

### Case study 7

A company increased the authorized share capital by a special resolution. However, the notice in Form No. 5 was not filed with the Registrar of Companies nor the requisite fee paid on the increase. After 2 years, the earlier resolution raising the share capital was rescinded and share capital brought back to its original level. Whether the company committed any offence and, if so, was it a continuing offence?

### Case study 8

ACE Automobiles Limited is a company engaged in the manufacture of Cars. The company's investment in the shares of other bodies corporate and the loans made to other bodies corporate exceed 60 percent of its paid up share capital and free reserves and also 100 percent of its free reserves. The company has obtained a term loan from the Industrial Credit and Investment Corporation of India Limited. The company proposes to increase its investment in the equity shares of ACE Forgings Limited from 60 percent to 70 percent of the equity share capital of ACE Forgings Limited purchase of shares from the Foreign Collaborator. State the legal requirements to be complied with by ACE Automobiles Limited under the Companies Act to give effect to the above proposal. Will your answer be different if the company has defaulted in repayment of matured deposits accepted from the public?

### Case study 9

Mantop is a London based company having several business units all over the world. It has a manufacturing unit called Laptop with headquarters in Bengaluru. It has a branch in Seoul, South Korea which is controlled by the headquarters in Bengaluru. What would be the residential status under FEMA 1999 of Laptop in Bengaluru and that of Seoul branch?

### Case study 10

The Board of Directors of Mahi Limited propose to donate ₹4,00,000 to a school established exclusively for the benefit of children of employees and also donate ₹60,000 to a political party during the Financial year ending 31<sup>st</sup> March, 2012. The average net profits determined in accordance with the provisions of Sections 349 and 350 of the Companies Act, 1956 during the three immediately preceding financial years is ₹50,00,000.

Examine with reference to the provisions of the Companies Act, 1956 whether the proposed donations are within the powers of the Board of Directors of the Company.