PAPER – 4 : CORPORATE AND ALLIED LAWS

QUESTIONS

SECTION – A: COMPANY LAW

Accounts

1. (i) Star Limited is a subsidiary company of Healthy Limited. The financial year of Star Limited is 1st July to 30th June, whereas the financial year of Healthy Limited is from 1st April to 31st March every year. To maintain uniformity and consolidation of annual accounts the Board of Directors of Healthy Limited decided that the accounting year of Star Limited for the year 1st July, 2009 to 30th June, 2010 be extended from present 12 months to 21 months i.e. 1st July, 2009 to 31st March, 2011. Mention, in the light of the provisions of the Companies Act, 1956, the steps to be taken by the Healthy Limited in this regard.

   (ii) The Board of Directors of Bharti Limited has a practical problem. The registered office of the company is situated in a classified backward area of Maharashtra. The Board wants to keep the books of accounts of the company at its Corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Advice.

Audit

2. (i) A group of shareholders approaches you for advice regarding the affairs of Utility Apparels Limited. According to the shareholders, the management of the company is not exercising its powers properly and that the statutory audit is being carried out in a routine manner. They want that a special audit should be conducted so that the real nature of transactions carried out by the management will come to light. Advice, with reference to the provisions of the Companies Act, 1956, as to when a special audit can be directed and by whom.

   (ii) Hotline Carriers Limited appointed Mr. Smith as its auditor in the Annual General Meeting held on 30th September, 2010. Initially, he accepted the appointment. But he resigned from his office on 31st October, 2010 for personal reasons. The Board of Directors seeks your advice for filling up the vacancy by appointment of Mr. Albert as auditor. Advise.

   Also suggest the procedure to be adopted in case Mr. Albert is proposed to be removed from his office before the expiry of his term.

Dividend

3. A Public Company has been declaring dividend at the rate of 20% on equity shares during the last 5 years. The Company has not made adequate profits during the year

ended 31st March, 2010, but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the Company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2009-2010. Would your answer be different if the company utilized only the profits made in the previous years and retained in the profit and loss account for the purpose of payment of dividend at the rate of 20% for the year 2009-2010?

Directors

4. (i) ABC Limited has 10 directors on its board. Two of the directors have retired by rotation at an Annual General Meeting. The place of retiring directors is not so filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the Annual General Meeting could not complete its business, it is adjourned to a later date. At this adjourned meeting also the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'.

Referring to the provisions of the Companies Act, 1956, decide:

(a) Whether in such a situation the retiring directors shall be deemed to have been re-appointed at the adjourned meeting?

(b) What will be your answer in case at the adjourned meeting, the resolutions for re-appointment of these directors were lost?

(c) Whether such directors can continue in case the directors do not call the Annual General Meeting?

(ii) The Board of Directors of XYZ Limited filled up a casual vacancy caused by the death of Mr. P by appointing Mr. C as a director on 3rd April, 2010. Unfortunately Mr. C expired on 15th May, 2010 after working about 40 days as a director. The Board now wishes to fill up the casual vacancy by appointing Mrs. C in the forthcoming meeting of the Board. Advise the Board in this regard.

5. (i) Advise the Board of Director of Goodluck Papers Limited regarding validity and extent of their powers, under the provisions of the Companies Act, 1956 in relation to the following matters:

(a) Buy-back of the shares of the company, for the first time, upto 10% of the paid up equity share capital without passing a special resolution.

(b) Delegation of Power to the Managing Director of the company to invest surplus funds of the company in the shares of some companies.

(ii) An article of Association of a listed company has fixed payment of sitting fee for each Meeting of Directors subject to maximum of ₹ 10,000. In view of increased responsibilities of independent directors of listed companies, the company proposes to increase the sitting fee to ₹ 25,000 per meeting. Advise the company about the requirement under Companies Act, 1956 to give effect to this situation.

6. (i) Mr. Ram is director of Sharp Eye Limited He intends to construct a residential building for his own use. The cost of construction is estimated at ₹ 1.50 Crores, which Mr. Ram proposes to finance partly from his own sources to the tune of ₹ 60 lacs and the balance ₹ 90 lacs from housing loan to be obtained from a housing finance company. For the purpose of obtaining the loan, he has approached the housing finance company which has in principle agreed to grant the loan, but has put a condition. The condition put by the housing finance company is that the Sharp Eye Limited of which Mr. Ram is a director should provide the guarantee for repayment of the loan and interest as per the terms of the proposed agreement for granting the loan to Mr. Ram. You are required to advise Mr. Ram on the matter with reference to the provisions of the Companies Act, 1956.

(ii) Draft a Board Resolution of Sharp Eye Limited for providing guarantee for ₹ 90.00 lacs in respect of a Loan to be obtained by Mr. Ram, a director thereof from a Housing Finance Company for construction of a residential house for his own use.

Meetings, Powers of the Boards and Related Party Transaction

7. (i) The Board meeting of PQR Ltd. was held on 10th May, 2010 at Chennai at 11a.m. At the time of starting the board meeting the number of directors present were 7. The total number of directors were 10. The board transacted ten items in the board meeting. At 12 noon after the completion of four items in the agenda 4 directors left the meeting. Examine the validity of these transactions explaining the relevant provisions of the Companies Act, 1956.

(ii) The articles of Association of XYZ Computers Limited provided for a maximum of 15 Directors. But the company has only 10 Directors and for two of them representing Foreign Collaborators, alternate Directors have been appointed. Board Meeting held on 1st August, 2010 was attended by 4 Directors including 2 alternate Directors.

Examine with reference to the relevant provisions of the Companies Act, 1956 whether quorum was present at the Board Meeting held on 1st August, 2010.

Will your answer be different, if the articles provide for a Quorum of 6 Directors?

8 (i) The Articles of Association of ABC Limited provided that a meeting of the Board of Directors shall be held at 11.00 A.M. on the last day of every quarter ending on 31st March, 30th June, 30th September and 31st December. Relying on the said provision, the company did not send notices to the directors in respect of a board meeting held on 31st March, 2010. Some of the directors have questioned the validity of the board meeting on the ground that individual notices have not been sent to directors.

(ii) On 24th January, 2010, the Board of Directors BUI Limited appointed Mr. A as the company's Sole Selling Agent for a period of 5 years. At the first general meeting of the company, held after the Board meeting, on 29th September, 2010, the above

appointment was disapproved. Referring to the provisions of the Companies Act, 1956.

(i) State the date from which the above appointment comes to an end.

(ii) What would be your answer in case a condition in the above appointment that "the appointment must be made by the company in General Meeting" was not attached thereto?

Inspection and Investigation

9. ABC Limited, over years, enjoys high reputation and its General Reserve is many times more than the paid up share capital of the company. There is apprehension of cornering the shares of the company by some persons likely to result in change in the Board of Directors which may be prejudicial to the Public interest.

Advise, as to how can ABC Limited block the transfer of shares of the company under the provisions of the Companies Act, 1956.

Compromise, Arrangements and Reconstructions

10. (i) A scheme of reconstruction of Western Stone Limited was, approved by its shareholders and creditors in their meeting and resolutions to that effect were passed. Afterwards a few shareholders and creditors of the company raised objections against the said arrangements of reconstruction. The entire paid up share capital of the company was wiped out by the accumulated losses. Advise the Directors of the said company about the steps to be taken, to give effect to the proposed scheme under the Companies Act, 1956.

(ii) A scheme of amalgamation was approved by overwhelming majority of members of both the merging companies. The exchange ratio was fixed by a firm of reputed Chartered Accountants. When the scheme of amalgamation was awaiting sanction of the court, a small group of members of one of the merging companies raised objection on the ground that the exchange ratio was unfair. Examine with reference to decided case law whether the objection is likely to be sustained. What would be your answer in case similar objection was raised by the Central Government?

Prevention of Oppression and Mismanagement

11. Ahimsa Private Limited was incorporated in the year 2010 under the Companies Act, 1956 by 3 brothers, namely, Amit, Anil and Akhlesh. All the three were Promoter-directors named in the Articles of Association and subscribed for 100 shares each in the company through Memorandum of Association. Thereafter, from time to time, further shares were allotted in proportion of one-third to each of them and in due course, the company started earning substantial profits. Due to greed of money, the two brothers, namely, Amit and Anil, joined hands together to assume complete control of the company, leaving their brother, Akhlesh in lurch. Both the brothers got further shares allotted to themselves, thereby their joint shareholding increased from 66% to 90%, while

the shareholding of Akhelesh got reduced from the erstwhile 33% to 10%. No notice of any Board Meeting was sent to Akhlesh, who was sidelined and was also removed as a Director.

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

12. The issued, subscribed and paid-up share capital of ABC Limited is ₹ 10 lakhs consisting of 90,000 equity shares of ₹ 10 each fully paid up and 10,000 preference shares of ₹ 10 each fully paid up. Out of the members of 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.

    State with details whether the above petition under Section 397 and 398 is maintainable. Will your answer be different, if preference shareholders have subsequently withdrawn their consent?

Corporate Winding up and Dissolution

13. XYZ Limited is being wound up by the Court. The official liquidator after realisation of the assets has an amount of ₹ 56,00,000 at his disposal towards payment of creditors of the company. Details of creditors are as under:

		₹
(i)	Dues to secured creditors	40,00,000
(ii)	Dues to workers	30,00,000
(iii)	Taxes and duties payable to Government Authorities	4,00,000
(iv)	Unsecured creditors	80,00,000

    Since the available amount is insufficient to meet the claims of all the creditors, explain the procedure to be followed for payment of dues as provided in the Companies Act, 1956, assuming that the company has created a charge on all the assets of the company in favour of the secured creditors.

Producer company

14. (i) An Interstate Cooperative Society has been incorporated on 1st May, 2011 as a Producer Company under the provisions of the Companies Act, 1956. Give your comments on its proposal to have 18 directors on its Board after incorporation as a Producer Company.

    (ii) A Producer Company wants to issue bonus shares. You are required to state the relevant provisions of the Companies Act, 1956 in this regard.

(iii) What are the modes of investment, from and out of its general reserves, available to a Producer Company formed and registered under Section 581C of the Companies Act, 1956?

E-governance

15. What is Director Identification Number (DIN)? What things should be taken care of while filling form DIN-1?

Companies Incorporated outside India

16. Kohinoor Limited was incorporated in London with a paid up capital of 10 million pounds. Mr. Y an Indian citizen holds 25% of the paid up capital. Panna Limited a company registered in India holds 30% of the paid up capital of Kohinoor Limited. Kohinoor Limited has recently established a share transfer office at New Delhi. The company seeks your advice as to what formalities it should observe as a foreign company under Companies Act, 1956. State briefly the requirements relating to filing of accounts with the Registrar of Companies by the foreign company in respect of its global business as well as Indian business.

Corporate Secretarial Practice

17. Mr. Shrikant is working as Chief accountant in Black marbles Limited. The Board of Directors of the said company propose to charge him with the duty of ensuring compliance with the provisions of the Companies Act, 1956 so that books of account can be properly maintained and Balance sheet and Profit and loss Account can be prepared as per the provisions of law.

Draft a "Board Resolution" for the said purpose.

Also point out the consequences in case of default, when such a resolution is passed.

SECTION – B: ALLIED LAWS

The Securities and Exchange Board of India (SEBI)

18. SEBI received complaints from some investors alleging that ABC Ltd. and some brokers are indulging in price manipulation in the shares of ABC Ltd. Explain the powers that can be exercised by SEBI under the Securities and Exchange Board of India Act, 1992 in case the allegations are found to be correct.

19. Sunshine Limited was incorporated on 1st April, 2007. The Company got its shares listed at Bombay Stock Exchange on 30th September, 2008. The Company at an Extra-Ordinary General Meeting held on 31st October, 2010, decided to go for public issue of equity shares to an extent of ₹ 300 crores. The net worth of the Company as per the audited Balance sheets in the financial years 2008-09 and 2009-10 was ₹ 50 crores and ₹ 60 crores respectively. During the financial year 2009-10 the Company had already issued equity shares amounting to ₹ 20 crores. There is no change in the name of the

Company or its business activities during the financial year 2009-10. Referring to the guidelines issued by Securities and Exchange Board of India, advise the Company on the following:

(i) Whether the Company can go ahead with the public issue of equity shares as stated above.

(ii) What would by your advice in case the net worth of the Company as per audited balance sheets in the financial years 2008-09 and 2009-10 was ₹ 20 crores and ₹ 30 crores respectively?

(iii) What would be the position in case the Company in question changed its name to Sunshine Limited during the year 2009-10, three months before filing the offer document and the revenue due to change of business activity suggested by the new name during the financial year 2009-10 was 40% less than the total revenue for the financial year 2008-09 reckoned from the date of filing the offer document?

Securities Contracts (Regulation) Act, 1956

20. (i) SEBI is of the opinion that in the interest of investors it is desirable to amend the rules of XYZ Stock Exchange prohibiting the appointment of the broker-member as President of the stock exchange. Explain with reference to the provisions of the Securities Contracts (Regulation) Act, 1956 whether it is possible for SEBI to amend the rules of the Stock Exchange, if the rules are not amended by the stock exchange.

(ii) PQR Ltd. is holding 33% of the paid up equity capital of Koya Stock Exchange. The company appoints MNL Ltd. as its proxy who is not a member of the Koya Stock Exchange, to attend and vote at the meeting of the stock exchange. Examine whether the Koya Stock Exchange can restrict the appointment of MNL ltd. as proxy for PQR Ltd. and further restrict, the voting rights of PQR Ltd. in the Koya Stock Exchange.

Foreign Exchange Management Act, 1999

21. (i) Examine whether the following branches can be considered as a 'Person resident in India' under Foreign Exchange Management Act, 1999:

(a) ABC Limited, a company incorporated in India established a branch at London on 1st January, 2010.

(b) M/s XYZ, a foreign company, established a branch at New Delhi on 1st January, 2010. The branch at New Delhi controls a branch at Colombo.

(ii) Mr. Sekhar resided in India for a period of 150 days in India during the financial year 2008-09 and thereafter went abroad. He came back to India on 1st April, 2009 as an employee of a business organization. What would be his residential status during the financial year 2009-2010?

The Competition Act, 2002

22. (i) The Central Government on the recommendation of selection committee appoints Mr. RKP aged 56 years as Member of the Competition Commission of India to be effective from 1st January, 2009. State with reference to the provisions of Competition Act, 2002 the term for which he will be appointed and whether he can be reappointed as such and also if he resigns after two years whether the vacancy can be filled up by the Chairman of the commission.

You are further required to mention the composition of the selection committee on whose recommendation the central Government appoints chairman and other members of the Competition Commission of India.

(ii) P Ltd. and Q 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 Competition Commission of India (CCI) stating that the agreement between the two is anti-competitive and against the interests of others in the trade. Examine with reference to the Provisions of the Competition Act, 2002, 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.

Interpretation of Statutes, Deeds and Documents

23. (i) There is an apparent difference between section 292 of the Companies Act, 1956, which permits the board to delegate its power to make loans and section 372A of the Companies Act, which requires approval of loan by a resolution passed at a board meeting with the consent of all the directors present at the meeting. How would you interpret these two provisions applying the rule of harmonious construction?

(ii) What do you understand by the term 'Preamble" and how does it help in interpretation of a statute?

Banking Regulation Act, 1949, The Insurance Act, 1938. The Insurance Regulatory and Development Authority Act, 1999. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

24. (i) In what way does the Reserve Bank of India (RBI) regulate the determination of loans and advances which can be made by a Banking Company under the Banking Regulation Act, 1949? Explain.

(ii) Explain briefly the procedure relating to Enforcement of security interest under SARFAESI Act, 2002?

Prevention of Money Laundering Act, 2002

25. Enumerate the obligations of banking companies under the Prevention of Money Laundering Act, 2002.

SUGGESTED ANSWERS/HINTS

1. (i) EXTENSION OF FINANCIAL YEAR: Where it appears to the Central Government that it is desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting, the Central Government may on the application or with the consent of the Board of Directors of the company whose financial year is to be extended, direct that in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return, shall not be required to be submitted or made, earlier than the dates specified in the direction notwithstanding anything to the contrary in the Companies Act, 1956 or in any other Act for the time being in force.

   Thus the management can extend the financial year of Star Limited from 12 months to 21 months.

   Following steps are required to be taken for this purpose.

   1. To convene a meeting of the Board of Directors of Star Limited whereat the resolution for extending the financial year is to be passed so that the year ending matches with the year ending of Healthy Ltd.
   2. To make an application under Section 213 of the Companies Act, 1956 to the Central Government giving full details and specific reasons for seeking the extension in year ending.
   3. To attach the following to the application:-
      (a) A certified copy of the Last Balance Sheet and Profit and Loss Account of Healthy Limited and Star Limited.
      (b) A certified copy of the Memorandum of Association and Articles of association of both the companies.
      (c) A certified copy of the resolution of the Board of Directors proposing the extension of the financial year.
      (d) Requisite fee payable to the Central Government under Rules.

   (ii) Maintaining the books of Accounts at a place other than Registered office of the company: According to Section 209 of the Companies Act, 1956, every company shall keep the books of accounts at its registered office. However, the books of accounts can be kept at such other places in India as the Board of directors may decide and when the Board of directors so decide, the company shall within 7 days of the decision, file with the Registrar of Companies a notice in Form No. 23AA in writing giving full address of the other place. Thus in the present case,

Bharti Limited can follow the above procedure and keep its books of accounts at Mumbai office.

2. (i) Special Audit: According to Section 233A of the Companies Act, 1956, the Central Government has the power to direct special audit in certain circumstances. They are:

(i) if the Government is of the opinion that the affairs of the company are not being managed in accordance with sound business principles or prudent commercial practices; or

(ii) that the company is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains or

(iii) that the financial position of the company is such as to endanger its solvency.

Thus the group of shareholders can make a complaint about the affairs of Utility Apparels Ltd., to the Central Government. If the Government is satisfied, it may order a special audit to be carried out either by the statutory auditors of the company or by any Chartered Accountant. The special auditor appointed under this section will have the same powers as an auditor of the company has under Section 227 of the Act.

(ii) Under section 224(6) of the Companies Act, 1956, the Board may fill any casual vacancy in the office of an auditor. However, where such vacancy is caused by resignation of an auditor, the vacancy shall be filled by the company in general meeting. Thus, in the present case, the company may convene an Extra Ordinary General Meeting to appoint Mr. Albert as its auditor consequent upon the resignation by Mr. Smith.

In term of section 224(7) of the Act, 1956, Mr. Albert may be removed from office before the expiry of his term only by the Company in General Meeting after obtaining previous approval of the Central Government.

3. As per Rule 2 of the Companies (Declaration of Dividend out of Reserves) Rules, 1975 dividend may be declared by a company for any year out of the accumulated profits earned by it previous years and transferred by it to the reserves subject to certain conditions. One of the conditions is that the rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 5 years immediately preceding that year or 10% of its paid-up capital which ever is less. As the proposed dividend exceeds 10%, it is necessary to seek the approval of the Central Government as required under section 205A(3) and only after obtaining the approval of the Central Government, the company may declare dividend at rate of 20% for year 2009-10, even if the other conditions relating to the amount that can be drawn from the reserves and minimum balance in the reserve are fulfilled. However, the credit balance, if any, carried in the profit and loss account will be available for declaration of dividend without any

restriction. Hence in such a case dividend may be declared at the rate of 20% for 2009-10, without approval of the Central Government.

4. (i) Retiring director – When to be deemed director?

In accordance with the provision of the Companies Act, 1956, as contained in Section 256(3) at the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by re-appointing the retiring director or some other person thereto. If the place of retiring director is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned to same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday. If at the adjourned meeting also, the place of the retiring is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless at the adjourned meeting or at the previous meeting a resolution for the re-appointment of such directors was put and lost.

Therefore, in the given circumstances answer to the questions as asked shall be:

(a) In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.

(b) In the second case, where the resolutions were lost, the retiring directors shall not be deemed to have been re-appointed.

(c) In the third case the directors due to retire shall vacate their offices latest on the date on which Annual General Meeting was to be held. (*B.R. Kundra v. Motion Pictures Association, 1976, 46 Comp. Cas. 339*)

(ii) Section 262 of the Companies Act, 1956 authorises the Board of Directors to fill up casual vacancies if the office of any director appointed by the company in general meeting is vacated before his term of office and hence the appointment of C was in order. In normal course, C could have held his office as director up to the date to which Mr. P would have held but Mr. C expired on 15th May 2010 and again a vacancy has arisen in the office of director owing to death of Mr. C who was appointed by the board to fill up the casual vacancy.

Hence the present vacancy cannot be considered as casual vacancy as stated in section 262 and therefore the board cannot fill up the same.

The Board may however appoint Mrs. C as an additional director under section 260 of the Act provided the articles of association authorises the board to do so, in which case Mrs. C will hold the office until the conclusion of the next annual general meeting.

5. (i) (a) Section 292 (1) (aa) of the Companies Act, 1956 facilitates buy-back of shares upto 10 % of the total paid up equity capital and free reserves. Hence, special

resolution in general meeting of the company is not required. The proposed buy-back of shares is in order provided other conditions laid down in Section 77A of the Companies Act, 1956 are fulfilled.

(b) Section 292 of the Companies Act, 1956 empowers the Board of Directors to delegate to the Managing Director the power to invest in general terms. But Section 372A (2) of the said Act provides that no investment shall be made unless it is sanctioned by a resolution passed at a meeting of the board with the consent of all Directors present. Section 372A does not provide for delegation. Hence the proposed delegation of power to the Managing Director to invest is not in order.

(ii) Under Section 310 of the Companies Act, 1956 approval of the Central Government shall not be required where sitting fee for each meeting of the Board of a Committee thereof does not exceed the prescribed sum under Rule 10-B of the Central Government's (General Rules & Forms, 1956) as under:

1.	Companies with paid up capital of ₹10 crores and above or turnover of ₹50 crores and above	Sitting fee not to exceed ₹ 20,000
2.	Other companies	Sitting fee not to exceed ₹ 10,000

Any increase in the sitting fee will require amendment of relevant provision of the Articles of Association. In the given case, the proposed sitting fee of ₹ 25,000 will require approval of the Central Government as the same exceeds the prescribed limits. The company can pay the sitting fee upto ₹ 20,000 depending upon the aforesaid parameters laid down in Rule 10-B.

6. (i) According to the provisions of Section 295 of the Companies Act, 1956, no company shall make any loan or give any guarantee or any security in connection with a loan made by any other person to any director of the lending company unless the previous approval of the Central Government is obtained in this respect.

In view of the above provisions of the law, Mr. Ram is required to approach Sharp Eye Limited intimating the company the full details of the loan transaction and the condition imposed by the housing finance company. Sharp Eye Limited is required to pass a Board Resolution as required by Section 292 of the Companies Act, 1956 and also a special resolution in terms of Section 372A if the facts of the case so require. Thereafter, the company is required to make an application to the Central Government for obtaining the approval under Section 295 of the Companies Act, 1956. On receipt of the approval of the Central Government, Sharp Eye Limited can provide the guarantee to housing finance company in respect of the loan proposed to be granted to Mr. Ram.

(ii) RESOLUTION PASSED IN THE MEETING OF THE BOARD OF DIRECTORS OF SHARP EYE LIMITED HELD ON_____

"RESOLVED that, subject to the approval of the Central Government, sanction be and is hereby accorded to the proposal of furnishing the guarantee in respect of a loan of ₹ 90.00 lacs to be obtained by Mr. Ram, a director of the Company, from M/s_____, a housing finance company as per terms and conditions contained in the draft loan agreement to be entered into between the said housing finance company and Mr. Ram, a copy of which is placed before this meeting and initialed by the Chairman for the purpose of identification.

RESOLVED FURTHER that Mr. _____, Secretary of the Company by and is hereby authorized to digitally sign the e-form 24AB, submit the application to the Ministry of Corporate Affairs and comply with all other formalities in this regard."

7. (i) Quorum: Section 287 of the Companies Act, 1956 provides for the quorum for meeting. The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength (any fraction contained in the said one third being rounded off as one), or two directors, whichever is higher. Where at any time the number of interested directors exceeds or it's equal to two thirds of the total strength, the number of remaining directors, that is to say, the number of directors who are not interested present at the meeting being not less than two shall be the quorum during such time. In this case, the quorum is 4(i.e. 1/3rd of 10=3 1/3 rounded of as 4).Hence the quorum was present at the time of commencement of meeting.

As a rule, in the case of a meeting of the Board of Directors, the meeting cannot transact any business, unless a quorum is present at the time of transacting the business. It is not enough that a quorum was present at the commencement of the business.

The quorum of the Board is required at every stage of the meeting and unless a quorum is present at every stage, the business transacted is void. *(Balakrishna vs. Balu Subudhi AIR 1949 Pat 184)*. In the given situation four items were transacted with the quorum and thus they are valid. Six items were transacted after 4 Directors left the meeting resulting in the reduction of quorum as only 3 Directors were present as against the required quorum of 4 Directors. Such six transactions are void.

(ii) Section 287(2) provides that the quorum for a meeting of the Board of Directors of a company shall be one third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher. Hence, in this case 1/3 of 10 i.e. 3 1/3 the fraction being rounded off as one i.e. 4 is quorum.

The alternate directors present at a meeting will be counted for quorum, if the original director is not present, the alternate directors present at a meeting will be counted for quorum. The Board meeting held on 1st August, 2010 was attended by 4 directors including 2 alternate directors quorum was present at the meeting. Hence, it is a valid meeting.

Section 287 only provides for a minimum quorum. It does not forbid a company to fix a higher quorum. A company in its articles cannot provide a quorum of lesser number of directors than what is provided in Section 287(2). However, it can provide for a higher number. Hence, if the articles provide 6 as quorum, the meeting held on 1st August, 2010 is not valid as it was attended only by 4 directors.

8. (i) If the Articles of Association of ABC Limited provides that a meeting of the board of directors shall be held on the last day of each quarter, it is not necessary that separate notices are required to be served on the directors. It was held in the case of *Arunachalam Chettlar vs. Kaleswarar Mills Ltd. [(1956) 26 COMP. CAS. 431*] that where articles of the company provide that there will be a meeting of the board of directors on the first Saturday of every month, there will be no necessity of service of notice to individual director and such clause in the articles of association is sufficient compliance of Section 286(1) of the Companies Act, 1956. In view of the said judgement the clause in the article is sufficient compliance of the requirement of sending the notice for a board meeting and the contention of some of the directors is not legally valid. However, as a good secretarial practice, notice for every board meeting should be sent to all the directors eligible to receive the notice.

(ii) According to Section 294(2) of the Companies Act, 1956, the Board of Directors of BUI Ltd. shall not appoint a sole selling agent for any area except subject to the condition that the appointment shall cease to be valid if it is not approved by the company in the first general meeting held after the date on which the appointment is made. It has been held that the appointment of a sole selling agent must be made by the company in its general meeting and such clause must be inserted as a mandatory condition in all appointments of sole selling agents; an appointment without such a clause being inserted is void ab-intio (*Arante manufacturing Corp. Vs. Bright Bills Private Ltd. 1967 Com/Case 769, Shelagram Jhaigharia Vs National Co. Ltd. 1965 Com. Cas. 706*). If the company in the general meeting disapproves the appointment, it shall become invalid from the date of the general meeting.

(i) Thus, appointment of Mr. A as the sole selling agent will come to an end on 29th September, 2010.

(ii) Yes, as discussed above, in absence of the above clause, the appointment of Mr. A as the sole selling agent of the company will be void ab-initio.

9. Restrictions and Prohibition of transfer of shares or debentures: As per the provisions of section 250(4) of the Companies Act, 1956, where the Company Law Board (Company Law Board till the Company Law Tribunal becomes operational, referred to as

CLB hereinafter) has reasonable grounds to believe that a transfer of shares in a company is likely to take place whereby a change in the composition of the Board of Directors of a company is likely to take place and the CLB is of the opinion that any such change would be prejudicial to the public interest, the CLB may, by an order, direct that any transfer of shares in the concerned company during such period not exceeding three years, as may be specified in the order, shall be void.

As per section 250 (1) & (2) of the Companies Act, 1956, if the CLB is of the view that there are good reasons to find out the relevant facts about any shares and the CLB is of the opinion that such facts cannot be found out unless the restrictions are imposed, as an interim measure, it may, by an order, direct that transfer of any such shares shall be void and no voting rights shall be exercised in respect of such shares. However, the CLB is empowered to vary or rescind its order at any time.

The facts given in the question squarely fall within the provisions of section 250 of the Companies Act, 1956. The management of ABC Ltd. may make a complaint to the CLB and convince it that the transfer of shares in favour of the group of unscrupulous persons would change the composition of the Board of Directors of the company which shall be prejudicial to the public interest and if the CLB is convinced with the plea of the company, it may pass an order as stated above which would block the transfer of shares as stated in the question.

10. (i) Scheme of reconstruction: The Company is a sick company and therefore can be considered as a company liable to be wound up with the meaning of Section 390 of the Companies Act, 1956. The proposed scheme involves a compromise or arrangement with members and creditors and attracts Section 391 of the said Act. An application be submitted before the High Court under Section 391 of the said Act. On such application the court may order that a meeting of creditors and/or members be called and held as per the directions of the court.

The company must send notice of meeting to every creditor/member containing a statement setting forth the terms of compromise explaining its effects. At the meetings convened as per directions of the court majority in number representing atleast ¾ in value of creditors/members present and voting must agree in compromise or arrangements. Thereafter the company must present a petition to the court for confirmation of the compromise or arrangement.

The notice of application made by the company will be served on the Central Government and the court will take into consideration representation, if any, made by the Central Government (Section 394A). The court will sanction the scheme, if satisfied, after consideration of all relevant matters. Copy of order issued by the court must be filed with the Registrar of Companies and then only the order will come into effect. Copy of the said order must be annexed to Memorandum of Association issued thereafter. The scheme sanctioned by the court shall be binding on all members and creditors even on those who were dissenting.

(ii) Exchange Ratio: Courts leave the aspect of share valuation to expert valuers and shareholders. Unless the person who challenges the valuation satisfies the court that the valuation is grossly unfair, the court will not disturb the scheme (*Piramal Spg Vs Weaving Mills Ltd*). In this case the valuation is confirmed to be fair by eminent firm of auditors and is also confirmed by majority of members. The objection of the some by small group of shareholders cannot be sustained as held in *Hindustan Lever Employees. Union Vs Hindustan Lever Ltd.*

Section 394A of the Companies Act, 1956 requires the Court (Tribunal) to give notice of every application made to it under Section 391 or 394 to the Central Government. The Court (tribunal) should take into consideration the representations if any made to it by that Government before passing any order. The role played by the Central Government is that of an impartial observer who acts in public interest and advises the Court (tribunal) whether it is or it is not feasible for the two companies to amalgamate (*Ucal Fuel Systems Ltd Sure*). But the court is not bound to accept the views of the Central Government. Thus objection of the Central Government as regards valuation of shares was rejected by the Court (Tribunal), in the face of views expressed by two independent chartered accountants (*M.G Investments & Industrial Co. Ltd Vs New Shorrock spinning & Mgf Co. Ltd*). Hence even in the case of representation by Central Government, unless that Government establishes that the exchange ratio was unfair and not in public interest, the court will refuse to interfere.

11. Under Section 397 of the Companies Act, 1956 on an application by any member of a company, the Company Law Board (Tribunal as per amended provision which has not come into force) is of the opinion that –

(i) the company's affairs are being conducted in a manner which is prejudicial to public interest or in a manner oppressive to any member(s); and

(ii) to wind up the company would unfairly prejudice such member(s), but that otherwise the facts justify winding up of the company on just and equitable ground,

The Company Law Board (CLB) may, with a view to bringing to an end the mattes complained of, make such order as it thinks fit.

As per section 399, a member holding 10% shares is entitled to file such a petition.

In the present case, Mr. Akhlesh was holding 33% shares in the company which is nothing but a quasi partnership and was participating in the management. By further allotment of shares in a clandestine manner and without the consent of Mr. Akhilesh, his shareholding was reduced to 10% while the shareholding of his brothers stood at 90%. This is a serious act of oppression of Akhlesh, a minority shareholder. On similar facts, it was held by Supreme Court in *Dale & Carrington Invt. Private Ltd. Vs. P.K. Prathpan, (2004) 122 Comp cases 175(SC)* that assuming meetings of board of directors did take place, the manner in which the shares were issued in favour of R without informing other

shareholders about it and without offering them to any other shareholder, was totally mala fide and the sole object of R in this was to gain control of the company by becoming a majority shareholder. This was clearly an act of oppression on the part of R. The only relief that has to be granted in the present case was to undo the advantage gained by R through his manipulation and fraud. The allotment of all the additional shares in favour of R had to be set aside.

Section 397 protects the rights of shareholders and not as a director. It has, however, been held by CLB in a number of cases that in a family company like the present one, removal of the promoter–director is also an act of oppression.

In the facts and circumstances of this case, Akhlesh is advised to file a petition under Section 397 of the Act. Being a 10% shareholder he is entitled to file the petition, before the Principal Bench of CLB at New Delhi. He may seek the following reliefs:

(i) the alleged allotment of further shares be declared null and void and set aside;

(ii) the alleged removal of the petitioner, Mr. Akhlesh be declared as null and void and set aside;

(iii) The Board of Directors be re-constituted with the petitioner and his two brothers and an independent person, as the Chairman of the board of directors to be appointed by the CLB with casting vote;

(iv) the petitioner may be appointed as Managing director of the company having substantial powers of management.

12. As per section 399 of the Companies Act, 1956, in the case of a company having a share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:

100 members; or

1/10th of the total number of members; or

Members (including equity shareholder as well as preference shareholder) holding not less than 1/10th of the issued share capital of the company.

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.

In the question above, the shareholding pattern of the company is as follows:

₹ 9,00,000 equity share capital held by 600 members.

₹ 1,00,000 preference share capital held by 5,000 members.

₹ 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:

(a) Number of members making the application:

- Preference shareholders 400
- Equity shareholders 50
- Total members 450

(b) Amount of share capital held by members making the application:

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

The application shall be valid if it has been made by the lowest of the following:

100 members

560 members (being 1/10th of 5,600)

Members holding ₹ 1,00,000 share capital (being 1/10th of ₹ 10,00,000)

As it is evident, the application made by 450 members meets the eligibility criteria specified u/s 399; therefore, the application is maintainable.

Such application shall remain valid despite the fact that some of the applicants have withdrawn their consent.

13. Section 530 of the Companies Act, 1956 lays down the procedure for payment of debts out of available funds with the Official Liquidator. However, Section 529A provides for overriding of the preferential payments as mentioned in Section 530. According to Section 529A, notwithstanding anything contained in other provisions of this Act or any other law for the time being in force, in the winding up of a company ,

(a) workmen's dues; and

(b) debts due to secured creditors, shall be paid in priority to all other debts.

The above debts have to be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

In this light of the legal provisions explained, the funds available with the Official Liquidator are not even sufficient to meet fully the dues payable to secured creditors and workers. Thus, tax dues to the tune of ₹ 4,00,000 payable to Government authorities will not get any payment even though they are to be considered as preferential payments as per section 530 of the Act. The secured creditors dues and workmen dues will get abated equally and they get ₹ 32 lakhs and ₹ 24 lakhs respectively. The other creditors will get nothing.

14. (i) As per provisions of section 581-O of the Companies Act, 1956, any Producer Company can not have more than fifteen directors. However, by way of a proviso, the said section further provides that in the case of an inter-State co-operative

society which is incorporated as a Producer Company, may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company.

In view of the above provisions of the Companies Act, 1956 the proposal to have 18 directors by the Producer Company after its incorporation as such, is a valid proposition, but since it is incorporated on 1st May, 2011, it can have more than 15 directors for one year only from the date of its incorporation

(ii) As per provisions of section 581ZJ of the Companies act 1956, any Producer Company may, upon recommendation of the Board and passing of resolution in the general meeting, issue bonus shares by capitalisation of amounts from general reserves referred to in section 581ZI in proportion to the shares held by the Members on the date of the issue of such shares.

(iii) As per Producer Companies (General Reserves) Rules, 2003 issued by the Department of Company Affairs, Ministry of Finance, Government of India on 7th August, 2003 a producer company formed and registered under section 581C of the Companies Act, 1956, shall make investments from and out of its general reserves in the following manner, namely:-

(a) in approved securities, fixed deposits, units and bonds issued by the Central or State Governments or cooperative societies or scheduled bank; or

(b) in a co-operative bank, state co-operative bank, co-operative land development bank or central co-operative bank; or

(c) with any other scheduled bank; or

(d) in any of the securities specified in section 20 of the Indian Trusts Act, 1882; or

(e) in the shares or securities of any other multi-state co-operative society or any co-operative society; or

(f) in the shares, securities or assets of a public financial institutions specified under section 4A of the Companies Act, 1956.

15. DIN (Director Identification Number): It is an unique Identification Number allotted to an individual who is an existing director of a company or intends to be appointed as director of a company pursuant to section 266A & 266B of the Companies Act, 1956.

Common precautions while filing form DIN – 1

No prefixes like Mr. / Ms. / Kumari / Shri etc should be used in filling the applicant's name.

Enter the applicant's name and father's name in full and do not use abbreviations, even if the ID proof contains the name in abbreviated form. Abbreviations in the middle name may be accepted, if such abbreviated middle name is appearing in the enclosed identity

proof. Also if middle name is given on the document, same should be mentioned on the application.

The particulars filled in form DIN-1 should match with the details given in the supporting documents to be submitted along with DIN application. Any mis-match will lead to rejection of DIN application.

The e-Form DIN 1 should be digitally signed either by applicant or Chartered Accountant/ Company Secretary/ Cost and Work Accountant or director/ Managing Director/ secretary of the company with which applicant is to be associated

16. As per section 591 of the Companies Act, 1956, companies falling under the following two classes shall be known as foreign companies namely:

(i) companies incorporated outside India which, after the commencement of this act, establish a place of business within India, and

(ii) companies incorporated outside India which have, before the commencement of this act, established a place of business within India and continue to have an established place of business within India at the commencement of this act. (2) notwithstanding anything contained in sub-section (1), where not less than fifty percent of the paid up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside Indian and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this act as may be prescribed with regard to the business carried on by it in India, as if foreign it were a company incorporated in India.

Here as more than 50% of the paid-up capital is held by Indian citizen and Indian company, Kohinoor Limited shall be treated as Foreign company. It shall have to comply with such provision of the act as may be prescribed as if it were a company incorporated in India.

Kohinoor Limited has to submit the following document with the Registrar of Companies within 30 days of establishment of business in India.

(a) a certified copy of the charter, statues, or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company; and, if the instrument is not in the English language, a certified translation thereof.

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company, containing the particulars mentioned in sub-section (2).

(d) the name and address or the names and addresses of the some one or more persons resident in India, authorized to accept on behalf of the company service of process and any notices or other documents required to be served on the company; and

(e) the full address of the office of the company in India which is to be deemed its principal place of business in India.

17. DRAFT BOARD RESOLUTION: "Resolved that pursuant to Sections 209 (7) and 211 (8) of the Companies Act,1956 Mr. Shrikant, Chief Accountant of the company be and is hereby charged with the duty of seeing that the requirements of Sections 209 and 211 of the Companies Act, 1956 are duly and fully complied with.

Resolved further that Mr. Shrikant is hereby entrusted with the authority to do such acts, things and deeds as may be necessary or expedient for the purpose of compliance with the requirements of the said sections 209 and 211 of the said Act."

Consequences in case of default

According to Section 209 (6) of the companies Act, 1956 the following persons are responsible to ensure that the company duly complies with the provisions of section 209:

1. The managing Director or manager of the company, if any;
2. All officers and other employees of the company or.
3. If the company has no managing director, every director of the company.

Penalty for default is imprisonment up to six months or fine up to ₹ 10,000/- if the persons mentioned above fail to take all reasonable steps to ensure that the provisions of Section 209 are duly complied with by the company or default has been committed by their own willful act. The punishment by way of imprisonment shall not be imposed unless the default was committed willfully [Section 209(5)].

In any penal proceedings, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that these requirements are complied with and that he was in a position to discharge that duty. Thus, the above Board resolution makes the chief accountant responsible for compliance with the provisions of sections 209 and 211 of the Companies Act, 1956.

18. Price manipulation in the shares of ABC Ltd. can be considered as fraudulent and unfair trade practices relating to securities market. In this case SEBI may exercise the following powers under Section 11(4) of securities and Exchange Board of India Act, 1992.

(i) Suspend the trading of any security (in this case the securities of ABC Ltd.) in a recognized stock exchange.

(ii) Restrain persons (in this case ABC Ltd.) from accessing the securities market. It can also prohibit any person associated with securities market (i.e. brokers who have indulged in price manipulation) to buy, sale or deal in securities market.

SEBI may issue the above orders for reasons to be recorded in writing. SEBI shall, either before or after passing such orders give an opportunity of hearing to company and brokers concerned (proviso 2 to Section 11(4)) SEBI may also appoint an adjudicating officer who may levy penalty under Section 15HA after holding an enquiry in the prescribed manner. According to Section 15HA if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be leviable to a penalty of ₹ 25 crores or 3 times the amount of profits made out of such practices, whichever is higher.

Prohibition on manipulation and deceptive practices: Further according to Section 12A, no person shall directly or indirectly indulge in following:

(a) using in manipulative or deceptive device in connection with purchase, sale or securities listed

(b) Employ any scheme or device to defraud in connection with dealing in securities which are listed

(c) engage in an act which would operate as fraud on deceit upon any person in connection with dealing in securities which are listed. SEBI may impose penalty upto ₹ 1 crore on any person who fails to comply with any provisions of SEBI Act, 1992 (Section 15HB).

19. As per the SEBI (ICDR) Regulations 2009, vide Regulation 26 (d) & (e), a listed Company shall be eligible to make a public issue of equity shares or any other security which may be converted into or exchanged with equity shares at a later date provided the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year;

if it has changed its name within the last one year, at least fifty per cent of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

Applying the above Regulations, the questions as asked in the problem can be answered as under:

1. There are two conditions in the guidelines as stated above viz.

   i) that the aggregate issue i.e. proposed + all the previous issues made in the same financial year should not exceed 5 times the net worth of the Company;

   ii) there is no change in the name of the issuer Company within the last 1 year.

   In the question the proposed issue of ₹ 300 crores + Previous issue in the same financial year is ₹ 20 crores, making an aggregate of ₹ 320. Since the aggregate of the issue is more than 5 times of Net Worth, i.e. more than ₹ 300 crores , the proposed offer is not within the limit, Company cannot proceed ahead with in the proposed issue of ₹ 300 crores.

2. In the second case the net worth is only ₹ 30 crores. 5 times of the net worth comes to ₹ 150 crores only. Since the aggregate of the proposed issue and the previous issue during the same financial year is ₹ 320 crores, which is exceeding the limits of ₹ 150 crores, as calculated above, the Company cannot proceed with the public issue of shares as proposed in the second case.

3. In the third case the offer cannot be made since the current year revenue is less than 50% of the total revenue of the previous year.

20. (i) Power of Central Government/SEBI to direct rules to be made or to make rules: Central Government is empowered under Section 8 of the Securities Contracts (Regulation) Act, 1956 to issue written order directing all or any of the recognized stock exchanges to make any rules or to amend any rules already made within 2 months from the date of the order in respect of matters specified in Section 3(2). One of the matters specified in Section 3(2) is the governing body of stock exchange, its constitution and powers of management and the manner in which its business is to be transacted. Hence, the Central Government is empowered to direct the Stock Exchange in respect of prohibition of broker-member being appointed as president of the stock exchange. According to the notification issued by the Central Government under Section 29A, this power is also exercisable by SEBI.

If any recognized stock exchange fails or neglects to comply with any order made by SEBI within 2 months, SEBI may itself make the rules made, either in the form prepared in the order or with such modifications thereof as may be agreed to between the stock exchange and SEBI. The amended rules should be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognized stock exchange is situated. After such publication, the rules will be valid, as if they had been made or amended by the stock exchange itself.

Hence SEBI can issue directions to the recognized stock exchange to amend the rules and if the said stock exchange does not take steps for amending the rules, SEBI may amend the rules on its own by following the procedure laid down in Section 8.

(ii) Section 7(a) of the Securities Contracts (Regulation) Act, 1956 provides that a recognised stock exchange is empowered to amend rules to provide for all or any of the following matters:

(a) Restriction of voting right to members only.

(b) Regulation of voting rights by specifying that each member is entitled to one vote only irrespective of number of shares held.

(c) Restriction on right of members to appoint proxy.

As such Koya Stock Exchange can restrict the appointment of MNL Ltd., as proxy, if rules of the exchange so provide. If it is not so provided, rules may be amended and after getting approval of the Central Government regarding amendment, it can restrict appointment of proxies.

Koya Stock Exchange can also restrict the voting rights of PQR Ltd. as proxy if rules of the exchange so provide. If it is not so provided, rules maybe amended and after getting approval of Central Government regarding amendment, it can restrict appointment of proxies.

21. (i) Person resident in India:

(a) Any person or body corporate registered or incorporated in India is a resident in India [section 2(v)(ii) of Foreign Exchange Management Act, 1999]. 'Person' includes a company [section 2(u)]. An office, branches or agency outside India owned or controlled by a person resident in India is a person resident in India. [Section 2(v)(iv)].

In view of the above provisions in FEMA, 1999, London branch established by ABC Ltd, a company incorporated in India, is a 'person resident in India' under the Act from the date of establishment i.e. 1st January, 2010.

(b) According to Section 2(v)(iii) of FEMA, 1999 an office, branch or agency in India owned or controlled by a person resident outside India is a person resident in India'. Only a body corporate registered or incorporated in India is a 'person resident in India'. According to section 2(w), 'person resident outside India' means a person who is not resident in India. Hence M/s XYZ, foreign company is a 'resident outside India. But the branch at New Delhi owned by M/s XYZ is a 'resident in India' within the meaning of section 2(v) (iii) from the date of establishment i.e. 1st January, 2010. The branch at Colombo controlled by the branch at New Delhi referred to in the question is a person 'resident in India' within the meaning of section 2(v)(iii) read with section 2(v)(iv).

(ii) In accordance with the provisions of Section 2(v) of the Foreign Exchange Management Act, 1999, as contained in section 2(v) a person in order to qualify for the purpose of being treated as a "Person Resident in India" in any financial year, must reside in India for a period of more than 182 days during the preceding financial year. In the given case, Mr. Sekhar has resided in India for a period of only 150 days, i.e., less than 182 days, during the financial year 2008-2009. Hence he cannot be considered as a "Person Resident in India" during the financial year 2009-2010 irrespective of the purpose or duration of his stay.

22. (i) Term of office of chairperson and other members are contained in Section 10 of the Competition Act, 2002: As per this section the chairperson and every other member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment. They shall not hold

office as such after attaining the age of sixty-five years. [Section 10(1)]

A vacancy caused by the resignation or removal of the chairperson or any other member by death or otherwise shall be filled by fresh appointment in accordance with the provisions of Sections 8 and 9 of the Act. [Section 10(2)]

Keeping the above provision in mind Mr. RKP can be appointed as member of the commission for a term of 5 years as he is aged 56 years on 1-1-09. He can also be reappointed but his reappointment will be only up to the age of 65 years. If Mr. RKP resigns as member after working for two years the resulting vacancy can be filled up by fresh appointment approved by the Selection Committee and the Chairman has no power to fill up the vacancy on his own.

Selection committee for chairperson and members of commission

The chairperson and other members of the commission shall be appointed by the Central Government from a panel of names recommended by a selection committee.

Selection committee shall consisting of –

(a) The chief justice of India or his nominee ---------- as Chairperson;

(b) The secretary in the Ministry of Corporate Affairs ---------- as Member;

(c) The secretary in the Ministry of Law and Justice ---------- as Member;

(d) Two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy as members. (Section 9)

(ii) Factors determining appreciable adverse effect on competition[Section 19(3)]: The Competition Commission of India (CCI), while determining whether an agreement is anti-competitive under Section 3 of the competition Act, 2002, will take into account the following factors.

(a) creation of barriers to new entrants in the market

(b) driving existing completions out of the market.

(c) foreclosure of competition by hindering entry into the market.

(d) accrual of benefits to consumers.

(e) improvements in production or distribution of goods or provision of services and

(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

23. (i) Rule of Harmonious Construction: Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so

interpreted, wherever possible, as to give effect to all of them. This is what is known as the Rule of Harmonious Construction. Importance should not be attached to a single clause in one section overlooking the provisions of another section. If it is impossible to avoid inconsistency, the provision which was evaluated or amended later in point of time must prevail. The rule of Harmonious Construction is applicable only where there is real and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other.

Every loan falling within the purview of Section 372A of the Companies Act, 1956 must be sanctioned by a resolution of the Board of Directors passed at its meeting [Section 372A(2)]. Every such resolution must be passed with the consent of all the directors present at the Board meeting, that is no one dissenting or unanimously.

Every loan covered by Section 372A falls within the purview of Section 292 (1)(e). That section permits delegation by the Board of its power of making loans vide proviso to Section 292 (1), subject to the conditions stipulated in Section 292(3). The condition that the resolution delegating the power must specify the total amount upto which loans may be made by the delegate, the purposes for which the loans may be made and the maximum amount of loans which may be made for each purpose in individual cases.

However, by harmonious interpretation of both the provisions of Section 292 and 372A and in absence of specific prohibition in Section 372A against delegations, the Boards power under Section 372A may be delegated in accordance with the provisions of Section 292 by passing unanimous resolution of the Board. Any other interpretation will make provisions of Section 292 redundant.

(ii) Preamble: The "Preamble" expresses the scope, object and purpose of the Act. It may recite the ground and the cause making a statue and the evil, which is sought to be remedied by it. It is a part of the statute and can legitimately be used for construing it. However, it does not over-ride the plain provisions of the Act, but if the wording of the statute gives rise to the doubts as to its proper construction, e.g., where the words or phrase have more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, then the Preamble can and ought to be referred to in order to arrive at the proper construction.

24. (i) Powers of RBI to regulate determination of loans and advances by banking companies: By virtue of provisions of Banking Regulations Act, 1949, as contained in Section 21 the RBI is empowered to issue directives to a banking company to determine the policy in relation to loans and advances. Such directions may relate to:

(1) Purpose for which loan may or may not be made.

(2) Margin stipulation.

(3) Maximum amount of advances to any company, firm individual or association of persons (at present 15% for individual borrower without infrastructure project, if infrastructure project go by additional 10%, 40% for group borrower and for infrastructure project of group borrower it may be up to 50% of bank's capital and reserve (presently tier-I and tier-II capital from capital adequacy point of view).

(4) Maximum amount of guarantee liability on behalf of any individual firm /company.

(5) The rate of interest and other terms and conditions on which such advances are made or guarantee given.

It may further be mentioned that in accordance with the provisions of Section 21A, rate of interest charged by banking company on the basis of loan contract between the bank and debtor is not to be subject to scrutiny by the court.

(ii) Enforcement of Security Interest (Section 13): Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as on-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of Section 13. This notice shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower. The procedure for the service of the notice is prescribed in the Security Interests (Enforcement) Rules.

Sub-section (4) of Section 13 provides that if the borrower fails to discharge his liability in full within the above specified period, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

25. Section 12 of Prevention of Money Laundering Act, 2002 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries of securities market. Every banking company, financial institution and intermediary shall:

(a) Maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month. Such records shall be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company or financial institution or intermediary, as the case may be:

(b) Furnish information of the above transactions to the Director appointed for the purpose of this Act within the prescribed time;

(c) Verify and maintain the records of the identity of all its clients, in the prescribed manner.

If the principal officer of a banking company or financial institution or intermediary has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

Applicability of relevant Amendments/Circulars/Notifications/Regulations etc.

SUBJECT	AMENDMENT	CONTENT	LINKS FOR REFERENCE
The Companies Act, 1956	Section 212	The Ministry of Corporate Affairs (MCA) through a General Circular No. 2/2011 dated 8th Feb, 2011 decided that the permission for not attaching accounts of subsidiary along with holding company's accounts may be granted on a general basis wherever the conditions prescribed by the Ministry are complied with.	http://www.mca.gov.in/Ministry/pdf/Circular_08feb2011.pdf
The Companies Act, 1956	Section 211	The MCA through Notification No. S.O. 301(E) dated 8th Feb, 2011 issued a notification on General Exemption whereby the prescribed categories of companies will be exempted from the disclosures of certain quantitative details required under Schedule VI	http://www.mca.gov.in/Ministry/notification/pdf/SO_301%28E%29_8feb2011.pdf
The Companies Act, 1956	Payment of Commission to Non-Whole Time Directors of the Company under Section 309(4)(b)	The MCA through Press Release ID 69674 dated 8th Feb, 2011 issued a notification on Managerial Remuneration, according to this, Schedule XIII is being amended to provide that unlisted companies (which are not subsidiaries of listed companies) shall not require Government approval for managerial remuneration in cases where they have no profits/ inadequate profits, provided they meet the other conditions stipulated in the Schedule.	http://www.mca.gov.in/Ministry/press/press/Press_Note_No.4_08feb2011.pdf
The Companies Act, 1956	Payment of remuneration by way of commission under section 309(4)	The MCA through General Circular No. 4/2011 dated 4th March, 2011 has decided that a company shall not require approval of the Central Government for making payment of remuneration by way of commission to its Non-Whole Time Director(s) in addition to the sitting fee if the total commission to be paid to all those Non-Whole Time Directors does not exceed	http://www.mca.gov.in/Ministry/pdf/Circular_4-2011_4mar2011.pdf

		1% of the net profit of the company if it has a Whole Time Director(s) or 3% of the net profit of the company if does not have a Managing Director or Whole Time Director(s).	
The Companies Act, 1956	Directors Identification Number (DIN) u/s 266B.	The MCA through General Circular No. 5/2011 dated 4th March, 2011 has simplified the procedure for obtaining Directors Identification Number (DIN) u/s 266B.	http://www.mca.gov.in/Ministry/pdf/Circular_04Mar2011.pdf
The Companies Act, 1956	E-Governance	The MCA through General Circular dated 9th March, 2011 has decided to accept payments of value upto Rs. 50,000, for MCA 21 services, only in electronic mode w.e.f. 27th March, 2011.	http://www.mca.gov.in/Ministry/pdf/Circular9mar2011.pdf
The Companies Act, 1956	Prosecution of Directors	The MCA through General Circular No. 8/2011 dated 25th March 2011, has issued guidelines regarding prosecution of directors by the Registrar of Companies, wherein certain categories of Directors have been kept out of the purview of prosecution/Penal actions for defaults committed under the Companies Act, 1956.	http://www.mca.gov.in/Ministry/pdf/Circular_08-2011_25mar2011.pdf
The Companies Act, 1956	Filing of Balance Sheet and Profit and Loss Account	The MCA through General Circular No. 09/2011 dated 31st March, 2011 has mandated certain class of companies to file balance sheets and profit and loss account for the year 2010-11onwards by using XBRL taxonomy.	http://www.mca.gov.in/Ministry/pdf/xbrl_31mar2011.pdf
The Companies Act, 1956	Section 217(2A)	The MCA through Notification No. 289(E) dated 31st March, 2011 has made Companies (Particulars of Employees) Amendment Rules, 2011 by amending Companies (Particulars of Employees) Rules, 1975.	http://www.mca.gov.in/Ministry/notification/pdf/G.S.R.289%28E%29_31mar2011.pdf
The Companies Act, 1956	Section 314(1B)	The MCA through Notification No. 303(E) dated 6th April, 2011 has made the Director's Relatives (Office or Place of Profit) Amendment Rules, 2011 by amending Director's Relatives (Office or	http://www.mca.gov.in/Ministry/notification/pdf/G.S.R.303%28E%29_06apr2011.pdf

		Place of Profit) Rules, 2003.	
The Companies Act, 1956	Appointment of Cost Auditor	The MCA through General Circular No. 15/2011 dated 11th April, 2011 has revised the procedure for the appointment of cost auditor under section 233B of the Companies Act, 1956 to be followed by the companies and the cost auditor.	http://www.mca.gov.in/Ministry/mcaoffices/CAB_Circular_15-2011_11Apr2011.pdf
The Companies Act, 1956	Amalgamation of Government Companies	The MCA through General Circular No. 16/2011 dated 20th April, 2011 has simplified the procedure for amalgamation of Government Companies under section 396 of the Companies Act, 1956 in appropriate cases.	http://www.mca.gov.in/Ministry/pdf/Circular_16-2011_20apr2011.pdf
The Companies Act, 1956	Annual Reports through electronic mode	The MCA through Circular No. 18/2011 dated 29th April, 2011 has clarified that the company would be in compliance of sections 219(1) of the Companies Act, 1956, in case, a copy of Balance Sheet etc., is sent by electronic mail to its members subject to some conditions.	http://www.mca.gov.in/Ministry/pdf/Circular_18-2011_29apr2011.pdf
The SEBI Act, 1992	SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009	SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009 as amended by SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2010 dated 12th November, 2010.	http://www.sebi.gov.in/Index.jsp?contentDisp=SubSection&sec_id=5&sub_sec_id=5

Non-Applicability of the following Amendments/Circulars/Notifications

S.No.	Subject Matter	CA Final – Corporate and Allied Laws
1.	The Companies Bill, 2009	Not Applicable
2.	The Easy Exit Scheme, 2011	Not Applicable
3.	Companies (Second Amendment) Act, 2002 [relating to Winding up]	Not Applicable [Students are advised to study the General Provisions of winding up as covered under Paragraph 9.4 of the study material]
4.	Provisions relating to Revival and Rehabilitation of Sick-Industrial Companies	Not Applicable