PAPER – 4 : CORPORATE AND ALLIED LAWS

UPDATES

I. Companies Bill, 2008 and Companies Bill, 2009 (Not applicable for November, 2009 examinations)

Students are aware that the Companies Bill, 2008 and Companies Bill, 2009 which was introduced in the Lok Sabha has made extensive changes in the existing Companies Act, 1956. At present, it in the form of a Bill only and hence it is not applicable for the November, 2009 examinations.

II. SEBI (DIP) Guidelines, 2000, February 24, 2009 (applicable for November, 2009 examinations)

(a) Amendments to SEBI (Disclosure and Investor Protection) Guidelines, 2000.

The full text of the amendments is given in Annexure I and the amendments are explained in brief as under:

(i) Enhancing the validity period of observations.

(a) The validity period of the observations issued by SEBI has been enhanced from the existing period of three months to twelve months. The benefit of extended validity period would be available in respect of all the observation letters whose validity period has not expired on December 4, 2008.

(b) Before opening of the issue, every issuer shall be required to file an updated offer document with SEBI, highlighting all changes made in the document.

(c) Where updation include significant changes in the offer document, such an updated Red herring prospectus/ prospectus or letter of offer shall be filed with SEBI at least one month before filing the same with Registrar of Companies or with Designated Stock Exchange as the case may be. The procedure for submitting such updated documents including what will constitute "significant changes", "additional fees" etc will be specified by SEBI shortly.

(ii) Reduction in timelines for completion of bonus issues.

(a) At present, in terms of the SEBI (DIP) Guidelines, a listed company is required to complete a bonus issue within a maximum period of six months from the date of approval of the issue by the board of directors of the company.

(b) The DIP Guidelines have been amended to reduce the timeline for completion of bonus issues. Accordingly, where no shareholders' approval is required as per the Articles of Association of the issuer, the bonus issue shall be completed within fifteen days from the date of the approval by the board of directors of the issuer in this regard. However, where shareholders' approval is required for capitalization of profits or reserves as per the Articles of Association of the issuer, the bonus issue shall be completed within sixty days from the date of the meeting of board of directors where-in bonus was announced subject to shareholders' approval.

(iii) Announcement of price band.

(a) At present, the floor price or price band in an initial public offer through the book building process is required to be disclosed in the Red Herring Prospectus registered with the Registrar of Companies, before the issue opening date.

(b) The amended DIP Guidelines permit the issuer making an initial public offer to announce the floor price or price band after the date of registration of the Red Herring Prospectus with the Registrar of Companies, atleast two working days before the issue opening date.

(c) Further, where the floor price or price band is announced after the date of registration of the Red Herring Prospectus with the Registrar of Companies, every issuer making a public issue, whether initial public offer or further public offer, shall ensure wide dissemination of the floor price or price band through various means, including newspaper advertisement. While announcing the floor price or price band, the issuer shall also disclose details of the relevant financial ratios used for justification of the floor price or price band. In case of a price band, such financial ratios shall be calculated for both upper and lower end of the price band.

(iv) Amendments in provisions pertaining to Preferential Allotment.

- Preferential allotment of warrants.

  (a) At present, the SEBI (DIP) Guidelines provide that warrants can be allotted on preferential basis, subject to the allottees paying upfront, an amount equivalent to at least 10% of the price fixed, at he time of allotment of warrants. It has now been decided to enhance the upfront amount payable from 10% to 25%.

(b) Certain clarifications regarding lock-in requirements of instruments allotted on preferential basis have been made in clause 13.3.1(c) and (d) of the DIP Guidelines.

- Non-applicability of certain provisions of Chapter XIII of the SEBI (DIP) Guidelines.

(a) It has been decided that an issuer, which has been granted relaxation by the Board in terms of regulation 29A of the SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 1997, shall be exempted from certain provisions of Chapter XIII of DIP Guidelines, subject to the condition that in the explanatory statement to the notice for the general meeting of the shareholders, the issuer gives adequate disclosures about the details of the plan including the process proposed to be followed by it for identification of the allottees in addition to the disclosures required in other applicable laws.

(v) Policy on relaxation from strict enforcement of rule 19(2)(b) of the Securities Contracts (Regulation) Rules, 1957 (SCRR).

(a) At present the SEBI (DIP) Guidelines provides for the policy regarding considering the requests for relaxation of the strict enforcement of requirements of rule 19(2)(b) of the SCRR where an unlisted company intends to list its shares issued to the shareholders of a listed company pursuant to a scheme of arrangement approved by a High Court, without making an initial public offer.

(b) The DIP Guidelines have now been amended to provide for the policy for onsidering relaxation from strict enforcement of requirements of rule 19(2)(b) of SCRR in case of proposal for listing of following securities by a listed issuer :-

Equity shares with differential rights as to dividend, voting or otherwise, offered through rights or bonus issue.

Warrants issued along with Non Convertible Debentures through Qualified Institutions Placement.

ANNEXURE I

AMENDMENTS TO SEBI (DIP) GUIDELINES, 2000

CHAPTER II

ELIGIBILITY NORMS FOR COMPANIES ISSUING SECURITIES

1. In clause 2.2.2B, in sub-clause (iv), for the words and figures "sub-clause (iv)", the words and figures "sub-clause (iii)" shall be substituted.

CHAPTER IV

PROMOTERS' CONTRIBUTION AND LOCK-IN REQUIREMENTS

2. In clause 4.6.5:-
   (a) the figures and punctuation "4.1.2," and mark and figure "& 4.5.1" shall be omitted;
   (b) for the punctuation mark "," appearing after the figure "4.3.1" and before the figure "4.4.1", the word "and" shall be substituted.
3. In clause 4.7.1:-
   (a) the figures and punctuation "4.1.2," and mark and figure "& 4.5.1" shall be omitted;
   (b) for the punctuation mark "," appearing after the figure "4.3.1" and before the figure "4.4.1", the word "and" shall be substituted.
4. In clause 4.11.1:-
   (a) the mark and figure "& 4.5" shall be omitted;
   (b) for the punctuation mark "," appearing after the figure "4.3" and before the figure "4.4", the word "and" shall be substituted.

CHAPTER V

PRE – ISSUE OBLIGATIONS

5. In clause 5.7.2, for the words "one week", appearing after the words "shareholders at least" and before the words "before the date of opening", the words "three days" shall be substituted.

CHAPTER VIII

OTHER ISSUE REQUIREMENTS

6. In clause 8.3.5, the words "by an unlisted company" appearing at the end shall be omitted.
7. After clause 8.3.5 and before the existing clause 8.3.5.1, the following clause shall be inserted, namely:-

"8.3.5.1 Application by an unlisted company for listing of equity shares pursuant to scheme sanctioned by a High Court"

8. The existing clause "8.3.5.1" shall be renumbered as clause "8.3.5.1.1".
9. Clause "8.3.5.2" shall be omitted.
10. Clause "8.3.5.3" shall be renumbered as clause "8.3.5.1.2".
11. Clause "8.3.5.4" shall be renumbered as clause "8.3.5.1.3".
12. After the renumbered clause 8.3.5.1.3, the following clauses shall be inserted, namely:-

"8.3.5.2 Application by a listed company for listing of equity shares with differential rights as to dividend, voting or otherwise.

8.3.5.2.1 A listed company may make an application to the Board for relaxation from applicability of clause (b) to sub-rule (2) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957 for listing of its equity shares with differential rights as to dividend, voting or otherwise, without making an initial public offer of such equity shares, if it satisfies the following conditions:

i. issue of such equity shares are made to all the existing shareholders as on record date by way of rights or bonus;
ii the issuer is in compliance with the conditions of minimum public shareholding requirement with reference to the equity shares already listed and the equity shares with differential rights proposed to be listed;
iii. the issuer undertakes to disclose the shareholding pattern of the equity shares with differential rights separately under clause 35 of the Equity Listing Agreement.

8.3.5.3 Application by a listed company for listing of warrants offered along with Non Convertible Debentures (NCDs) under Chapter XIII A.

8.3.5.3.1 A listed company may make an application to the Board for relaxation from applicability of clause (b) to sub-rule (2) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957 for listing of its warrants, if it satisfies the following conditions:

i. warrants are issued as combined offering of NCDs and warrants under Chapter XIII A of the SEBI (DIP) Guidelines,2000;
ii. the issuer is in compliance with all the provisions of Chapter XIII A, including eligibility of the issuer company, pricing guidelines, etc.;
iii. NCDs and warrants shall be traded in the minimum trade lot of Rs.1 lakh.

8.3.5.4 An application to the Board under clauses 8.3.5.1, 8.3.5.2 and 8.3.5.3 shall be made through the designated stock exchange of the listed company and the designated stock exchange may forward the application along with its recommendations, giving reasons in writing to the Board.

8.3.5.5 The Board may, while granting relaxation under clauses 8.3.5.1, 8.3.5.2 and 8.3.5.3, stipulate any other conditions as may be deemed necessary in the interest of investors and securities market under the facts and circumstances of the specific case."

13. In clause 8.21.1:-

    (a) for the words "3 months", appearing after the words "shall open within" and before the words "from the date of issuance of the observation letter" the words "12 months" shall be substituted;

    (b) in proviso the word "or fast track issue" appearing at the end, shall be omitted.

14. After clause 8.21.1, the following shall be inserted:-

    "8.21.2 The issuer shall, before filing a red herring prospectus (in case of a book built issue) or prospectus(in case of a fixed price issue) with ROC or letter of offer with Designated Stock Exchange, as the case may be, file with the Board through the lead merchant banker an updated offer document highlighting all changes made in the document.

    8.21.3 Where there are significant changes in the offer document, the updated offer document shall be filed with the Board, atleast one month before the date of filing of the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with ROC or letter of offer with Designated Stock Exchange, as the case may be, as per the procedure specified by the Board in this regard."

15. Clause 8.21.2 shall be renumbered as clause "8.22".

CHAPTER X

GUIDELINES FOR ISSUE OF CONVERTIBLE DEBT INSTRUMENTS

16. In clause 10.7.1.1:-

    (a) in the opening para of the body, the words "or the NCDs", appearing after the words "portions of PCDs" and before the words "issued by a listed company" shall be omitted;

    (b) in sub-clause (c), the words "NCDs or", appearing after the words "Before roll over of any" and before the words "non-convertible portion" shall be omitted.

17. In sub-clause (b) of clause 10.9:-

(a) for the word and comma "NCDs," occurring after the words "In case of", and before the words "redemption amount" the word "PCDs" shall be substituted;

(b) for the mark and word "/ NCDs" appearing at the end of the sub-clause, the word "PCDs" shall be substituted.

CHAPTER XI

GUIDELINES ON BOOK BUILDING

18. In clause 11.3.1, in sub clause (viii)(a) :-

(a) for the first proviso, the following provisos shall be substituted, namely:-

"Provided that the issuer may not disclose the floor price or price band in the red herring prospectus if the same is disclosed in case of an initial public offer, at least two working days before the opening of the bid and in case of a further public offer, at least one working day before the opening of the bid, by way of an announcement in all the newspapers in which the pre-issue advertisement was released by the issuer or the merchant banker;

Provided further that the announcement shall contain the relevant financial ratios, computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section titled "basis of issue price" in the offer document."

(b) in the second proviso:-

(i) for item (a), the following shall be substituted, namely:-

"a statement that the floor price or price band, as the case may be, shall be disclosed at least two working days (in case of an initial public offer) and at least one working day (in case of a further public offer) before the opening of the bid;"

(ii) in item (b), the words "in case of a further public offer" shall be added at the end.

19. In sub-clause (viii)(b)of clause 11.3.1, for the opening statement, the following shall be substituted, namely:-

"Where the issuer decides to opts for price band instead of floor price, the lead book runner shall ensure compliance with the following conditions:"

CHAPTER XIII

GUIDELINES ON PREFERENTIAL ISSUES

20. In clause 13.1.2.3, for the words "ten percent", appearing after the words "to atleast" and before the words "of the price", the words "twenty five percent" shall be substituted.

21. In clause 13.3.1,

    (i) for sub-clause (c), the following clauses shall be substituted, namely:-

    "(c) The instruments allotted on preferential basis and the shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to the promoter / promoter group of the issuer, in addition to the instruments or shares specified in sub-clauses (a) and (b) of clause 13.3.1, shall be locked-in for a period of one year from the date of their allotment.

    (c-a) The instruments allotted on preferential basis and the shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to any person other than the promoter / promoter group of the issuer shall be locked-in for a period of one year from the date of their allotment."

    (ii) in sub-clause (d), after the words "convertible instrument" wherever they appear, the words "other than warrants" shall be inserted.

    (iii) in sub clause (h), before the explanation, the following proviso shall be inserted, namely:-

    "Provided that the Board may, on an application made by the issuer in respect of the preferential allotment of shares fully convertible debentures and partly convertible debentures, grant relaxation from the requirements of this sub-clause if the Board has granted relaxation to the company in terms of Regulation 29A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997."

22. In clause 13.4.1, after the existing proviso the following proviso shall be inserted, namely:-

    "Provided that where the Board has granted relaxation to the issuer in terms of regulation 29A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, the preferential allotment of shares, fully convertible debentures and partly convertible debentures, shall be made by it within such time as may be specified by the Board in its order granting relaxation."

23. After clause 13.7.2, the following clause shall be inserted, namely:-

"13.7.3 Clause 13.1.1, 13.1.2, 13.1.3, 13.1A, and 13.5.1 shall not be applicable to a preferential allotment of equity shares, fully convertible debenture and partly convertible debentures, where the Board has granted relaxation to the company in terms of Regulation 29A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997; Provided that adequate disclosures about the plan including the process proposed to be followed for identifying the allottees, are given in the explanatory statement to notice for the general meeting of shareholders, in addition to disclosures required in terms of any other law."

CHAPTER XV

GUIDELINES FOR BONUS ISSUES

24. For clause 15.1.7 the following shall be substituted namely:-

"A company which announces bonus issue after the approval of board of directors and does not require shareholders' approval for capitalisation of profits or reserves for making bonus issue as per the Articles of Association, shall implement bonus issue within fifteen days from the date of approval of the issue by the board of directors of the company and shall not have the option of changing the decision.

Provided where the company is required to seek shareholders' approval for capitalisation of profits or reserves for making bonus issue as per the Articles of Association, the bonus issue shall be implemented within two months from the date of the meeting of the board of directors wherein the decision to announce bonus was taken subject to shareholders' approval."

Note: For further details, students may log on www.sebi.gov.in

III Amendments in Competition Act, 2002(List of Sections are not applicable for November, 2009 examinations)

(a) Competition Act, 2002 – Date of coming into force of certain Sections

The full text of amendments are given in Annexure II:

Annexure II

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION
New Delhi, 15th May 2009

S.O. 1241(E) - In exercise of the powers conferred by sub-section (3) of Section 1 of the Competition Act, 2002 (12 of 2003), the Central Government hereby appoints the 20th day of May, 2009 as the date on which Sections 3, 4 18, 19, 21, 26, 27, 28, 32, 33, 35, 38, 39 41, 42, 43, 45, 46, 47, 48, 54, 55 and 56 of the said Act, shall come into force.

(b) Competition (Amendment) Act, 2007 – Date of coming into force of certain Sections

The full text of amendments are given in Annexure III:

Annexure III

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION
New Delhi, 15th May 2009

S.O. 1242(E) - In exercise of the powers conferred by sub-section (2) of Section 1 of the Competition(Amendment) Act, 2007 (39 of 2007), the Central Government hereby appoints the 20th day of May, 2009 as the date on which Sections 3, 10, 13, 15, 16, 19, 20, 21, 25, 26, 28, 31, 33, 34, 35, 36, 38, 39 and 43 (53B, 53N, 53O, 53P, 53Q, 53R, 53S, 53T and 53U) of the said Act, shall come into force.

Note: For further details, students may log on www.cci.gov.in

In view of the above stated two notifications issued by the Ministry of Corporate Affairs, it is seen that most of the amended sections in the Competition Act, 2002 and further amended by the Competition (Amendment) Act, 2007 comes into force w.e.f. 15th May, 2009. Therefore these amended sections will be relevant for the May 2010 examinations.

In order to bring the clarity of the relevant applicable sections, students may study the definitional aspects covered in Sections 2 and Competition Commission of India covered in Sections 7-17 of the Competition Act, 2002 for November, 2009 examination.

IV The Companies (Appointment and Qualifications of Secretary) Amendment Rules, 2009 (Applicable for November, 2009 examinations)

The full text of amendments are given in Annexure IV:

Annexure IV

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION
New Delhi, 5th January 2009

G.S.R. 11(E) - In exercise of the powers conferred by clauses (a) and (b) of subsection (1) of Section 642 read with clause (45) of Section 2 and Section 383A of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualifications of Secretary) Rules, 1988, namely : –

1. (1) These rules may be called the Companies (Appointment and Qualification of Secretary) Amendment Rules, 2009.

(2) They shall come into force from the 15th day of March, 2009.

2. In the Companies (Appointment and Qualification of Secretary) Rules, 1988, in rule 2 –

   (i) in sub-rule (1) and in the proviso to sub-rule (4), for the words "rupees two crores" the following words shall be substituted, namely : –

   "five crore rupees";

   (ii) in sub-rule (3), the second and third proviso shall be omitted;

   (iii) after sub-rule (3), the following sub-rule shall be inserted, namely : –

   "(3A) A company having a paid up share capital two crore rupees or more but less than five crore rupees may appoint any individual who possesses the qualification of membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980), as a whole-time secretary to perform the duties of a secretary under the Companies Act, 1956:

   Provided that where a company has appointed under subrule (3) or this sub-rule, a whole-time company secretary, possessing the qualification of membership of the Institute of Company Secretaries of India, such a company is not required to obtain a certificate from a secretary in wholetime practice under rule 3 of the Companies (Compliance Certificate) Rules, 2001."

   Note: For further details, students may log on www.mca.gov.in

QUESTIONS

COMPANIES ACT, 1956

Accounts and Audit-Holding of adjourned meeting

1. The company of which you are the secretary has adopted 31st March as its financial year. The last annual general meeting of the company was held on 30-9-2008 to approve the accounts for the year 2007-08. The audit of the accounts for the year 2007-08 has not been completed. Your directors intend to hold the annual general meeting on 30-9-2008 to transact the business other than the consideration of the accounts for the year 2007-08 and to adjourn the meeting to a later date for the purpose of adoption of the annual accounts for 2007-08. State whether intended procedure would be in order? Comment on holding the adjourned meeting on 30-1-2009, if the audit is completed in December 2008.

Accounts and Audit-Vacation of office by Auditor

2. At an annual general meeting held on 25.9.2007, the auditor was appointed to hold

office up to the conclusion of the next annual general meeting. The next annual general meeting was convened on 19.9.2008 but stood adjourned without transacting any business. Does the retiring auditor continue in his office?

Declaration of dividend-Compulsory transfer to Reserve

3. The agenda for the meeting of the Board of Directors of M/s. Packsafe Enterprises Ltd. held on 20-3-2008 for adopting the annual accounts for the year ended 31-12-2007 included an item relating to payment of dividend. At the meeting it became apparent that the profits made during the year ended 31-12-2007 were inadequate to declare dividend. The Board was keen to maintain the rate of 20% dividend on the equity shares as declared in the previous years so as to maintain the image of the company. The company has some accumulated profits earned in previous years, which were transferred to reserves. Advise the company as to how it should go about to achieve the objective to pay dividend at the rate of 20% on the equity shares.

Directors

4. Examine the validity of the following:
   (i) Mr. Samuel, a Director of Sunshine Limited proceeding on a long foreign tour, appointed Mr. John as an alternate director to act for him during his absence. The articles of the company provide for appointment of alternate directors. Mr. Samuel claims that he has a right to appoint alternate director.
   (ii) The Articles of Association of M/s Pacific Ltd. provide 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 31.3.2008. Some of the directors have questioned the validity of the board meeting on the ground that individual notices have not been sent to directors.

Directors

5. M/s. PQR Ltd. has a paid-up equity share capital of Rs.1.5 crores divided into 15 lakh equity shares of Rs.10 each, fully paid. The company decides to buy raw materials from ABC Private Limited to the extent of Rs. 3 lakhs on credit. M, one of the directors of PQR Limited is also a director of ABC Private Limited, holding 30,000 fully paid equity shares in the latter company. The ABC Private Limited has a total paid-up Equity capital of Rs.10,00,000, divided into equity shares of Rs.10 each. ABC Private Limited are the dealers of the type of materials needed by PQR Limited. State:
   (i) What procedure must the PQR Ltd. follow to execute the deal?
   (ii) What duty does the Companies Act, impose upon M, the director of PQR Limited, who is also a director of ABC Private Limited?

(iii) To what penal consequences will M as director be subject to, in case of breach of duty on his part?

Directors

6. Accent Clothes Ltd. in its annual general meeting appointed all its directors by passing one single resolution. No objection was made to the resolution. Example the validity of appointment of directors explaining the relevant provisions of the Companies Act, 1956. Will it make any difference, if Accent Clothes Ltd. was a private company?

Meetings-Resolutions

7. Chunmun Ltd. has 11 directors out of which 4 were abroad. One of such directors had left his foreign address for all communications. In regard to an urgent matter, which could not wait till the next meeting, it circulated a resolution for approval of the directors. 4 out of 7 directors in India approved the resolution. Chunmun Ltd. claimed that the resolution was passed. Examine.

Meetings-Notice

8. Mr. Chander Lal goes abroad for four months from 4.1.2007 and an alternate director has been appointed in his place. Advice as to sending of notice as required under section 286.

Inspection and Investigation

9. When and by whom an application for investigation into the affairs of a company can be made?

Compromise, Arrangement and Reconstruction

10. Godrej Ltd. was amalgamated with, and merged in Vishal Ltd. Some workers of Godrej Ltd. refuse to join as workers of Vishal Ltd. and claim compensation for premature termination of services. Vishal Ltd. resists the claim on the ground that their services are transferred to Vishal Ltd. by the order of amalgamation and merger and, therefore, the workers must join service of Vishal Ltd. and cannot claim any compensation. Who will succeed the workers of Godrej Ltd. or the Vishal Ltd.? Give reasons.

Compromise, Arrangement and Reconstruction

11. Explain the term 'Reconstruction'. State the different methods by which reconstruction of companies may be effected?

Prevention of oppression and mismanagement

12. The issued, subscribed and paid-up share capital of GMR Nidhi Company Limited is Rs.10 lakhs consisting of 90,000 Equity shares of Rs.10 each fully paid up and 10,000 Preference shares of Rs.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 Section 397 and 398 is maintainable. Will your answer be different, if preference shareholders have subsequently withdrawn their consent?

Prevention of oppression and mismanagement

13. It is alleged by one member that the directors of the company have misused their position in making certain inter-corporate deposits which are against the interests of the company. Will the Company Law Board entertain application containing such allegation in the case of a private company?

Revival and Rehabilitation of Sick Industrial Companies

14. For the proper discharge of the functions of the Tribunal, what are the documents prepared by it through Operating Agency?

Corporate Winding Up and Dissolution

15. Real Estates Ltd. was incorporated with the object of developing land for residential houses as well as purchase and sale of flats. It had, therefore, purchased 5 acres of land near the airport at Calcutta. But Government acquired the same for defence purposes. The company would not replace the land as the prices of land of other places are prohibitive.

    What will be the decision of the court in the following cases:

    (i) The company suspends its business for a whole year?

    (ii) The company fails to resume its operations (business) for 5 years and the prospects seemed gloomy?

Producer Companies

16. A two year old Producer Company registered under Section 581C of the Companies Act, 1956 wants to donate some amount. The Chief Executive of the Producer company has approached you to advise him as to how and for what purposes the donation can be made by such company. Also state the monetary restrictions, if any, laid down in the Companies Act, 1956 on making donations by a Producer Company. You are informed that as per the Profit & Loss account of the Producer Company for its last accounting year, net profit was Rs. 30.00 Lacs.

E-Governance

17. What are the documents to be filed by a company with Registrar of Companies every year?

Corporate Secretarial Practice

18. M/s Asian Ltd., a public limited company is having a paid up share capital of Rs. 5.50 crores. Whether it is obligatory for the company to have a whole-time secretary? Will it make any difference, if the capital of the said Asian Ltd. was Rs. 3.50 crores? If yes, what other formality would have to be complied by it under the provisions of the Companies Act, 1956.

ALLIED LAWS

SEBI Act, 1992

19. SEBI received complaints from some investors alleging that Planet Ltd. and some brokers are indulging in price manipulation in the shares of Planet 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.

Securities Contracts (Regulation) Act, 1956

20. The shares of Package Utensils Ltd. were listed in Cochin Stock Exchange. The stock exchange delists the shares of the company. The aggrieved company approaches you to know the remedy available to the company. Give your suggestion to the company keeping in view the provisions of Securities Contracts (Regulation) Act, 1956.

Foreign Exchange Management Act, 1999

21. According to foreign Exchange Management Act, 1999, a person resident in India shall take all reasonable steps to repatriate to India any amount of foreign exchange earned and accrued to him. What is meant by the expression 'repatriate to India'? State the cases where foreign exchange can be held or need not be repatriated to India by a resident in India?

The Competition Act 2002

22. Hon'ble Justice Mr. Ram Shanker, a retired High Court Judge, attained the age of 61 years on 31st December, 2008. The Central Government appointed him as the Chairperson of the Competition Commission of India with effect from 1st January, 2009. You are required to state, with reference to the provisions of the Competition Act, 2002, the term for which he may be appointed as Chairperson of the Competition Commission of India. Whether he can be reappointed as such and till when he can remain as Chairperson of the Competition Commission of India?

The Banking Regulation Act, 1949

23. What are the obligations on Banking Company with respect to accounts and Balance Sheet?

Prevention of Money Laundering Act, 2002

24. Define the following under Prevention of Money Laundering Act, 2002:

    (i) Money Laundering

    (ii) Property

Interpretation of Statutes, Deeds and Documents

25. 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 directors present at the meeting. How would you interpret these two provisions applying the rule of harmonious constructions?

SUGGESTED ANSWERS/HINTS

1. According to section 210(3)(b) of the Companies Act, 1956, at every Annual General Meeting of the company (except the first Annual General Meeting) held in pursuance of section 166, the Board of Directors must place before the company a Balance Sheet and a Profit and Loss Account for the period beginning with the day immediately after the period for which accounts were last submitted and ending with the day which shall precede the day of the meeting by not more than six months. Where extension of time has been granted by the Registrar of Companies for holding meeting beyond six months, the financial accounts must be placed within the extension so granted, but not beyond nine months.

   Where accounts are not ready and available for being placed at an annual general meeting to be held within the time limit allowed by the Act for holding the meeting, the usual practice is to hold the meeting within the statutory time limit, transact all the business other than the consideration of accounts and then adjourn the meeting by an appropriate resolution to a future date when the accounts will be ready. But, adjourned Annual General Meeting must be held within the statutory period (including the extension thereof, if any, allowed), as provided in section 166(1) and such adjournment cannot bypass the provisions of section 210 of the Act.

   In view of the legal position stated above, the intention of the directors to hold Annual General Meeting for the year ending 31st March, 2008 on 30-9-2008 to transact the business other than consideration of accounts for the year 2007-08 and to adjourn the meeting to a later date for the purpose of adoption of the accounts is not violative of the provisions of the law. Further, the adjourned meeting which is deemed to be a continuation of the earlier meeting must be finished within the statutory period of 9 months (including extension) prescribed under section 210. In other words, the adjourned meeting must also be completed by 31-12-2008.

In case the adjourned meeting is held on 30-1-2009 it shall be violative of section 210(3) of the Companies Act and the directors responsible for the violation would be liable for prosecution under sections 210(5) and 166. The accounts for the year 07-08 should be placed at next Annual General Meeting in case time-limit under section 210 cannot be met. There is not bar to file unaudited accounts with Registrar Of Companies.

2. Where an Annual General Meeting is held whereat the new auditors are appointed, but Annual General Meeting is adjourned to a later date, the new auditors cannot assume office until the conclusion of the adjourned Annual General Meeting. The present auditors would continue to be the auditors till the conclusion of the adjourned annual general meeting, since the auditors hold office from the conclusion of one Annual General Meeting to the conclusion of next Annual General Meeting.

3. Dividends out of past profits/reserves can be declared as per the Companies (Declaration of dividend out of Reserves) Rules, 1975. These Rules, inter alia, provide that the dividends to be declared out of reserves shall not exceed average of dividends declared during the last 5 years or 10% of its paid up capital whichever is less. Since, in the present case, it is proposed to declare dividend @ 20%, it shall not be possible without previous approval of the Central Government as per section 205A(3).

   The company is advised to make an application to the Central Government, seeking approval for payment of dividend at 20%. It is presumed that the paid-up capital of the company consists of only equity share capital.

4. (i) Section 313 of the Companies Act, 1956 provides that the Board of Directors of a company may, if authorised by its articles or by resolution passed by the company in general meeting, appoint an alternate director to act for a director during his absence for a period of not less than 3 months from the state in which the meetings of the Board are ordinarily held. The alternate director can be appointed only by the Board of Directors and only in cases where the Board is authorised by Articles or by the company in general meeting. Hence Mr. Samuel, the director in question, is not competent to appoint alternate director and the appointment of Mr. John as alternate director is not valid.

   (ii) If the articles of association of M/s. Pacific Ltd. 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 notice is required to be served on the directors. It was held in Arunachalam Chettiar vs. Kaleswarar Mills Ltd that where articles of the company provide that there will be a meeting on the first Saturday of every month, there will be no necessity of the service of notice under section 286(i) in as much as a provision in the articles is sufficient compliance of section 286(1). However, as a good secretarial practice, notice should be sent to all the directors.

5. (i) Section 297 of the Companies Act, 1956 prohibits a director and certain other persons including a private company of which the director is a member or director from entering into a contract for sale, purchase, or supply of, inter alia (i.e. among

other things) materials without the consent of the Board of Directors. Further, in case the company has a paid up capital of Rs.1 crore or more, approval of the Central Government shall also be needed. Thus, in the present case, since the capital of the company is above Rs.1 crore, the requisite approvals of the Board of Directors and the Central Government must be obtained.

(ii) Section 299 of the Act charges a director to disclose his interest. He must have, therefore, disclosed the fact of his being a directors of the ABC Private Ltd. It is also his duty not to participate or vote in the Board's meeting in pursuance of section 300.

(iii) Consequences of non-disclosure of participation shall be:

(a) M shall have to vacate office of the director [Section 283].

(b) Shall be punishable with fine which may extend to Rs.5,000 [Section 299(4)].

6. At a general meeting, two or more persons cannot be appointed as directors by a single resolution unless a resolution that appointment shall be so made has first been agreed to by the meeting without any vote being given against it. A resolution moved in contravention of this provision shall be void, whether or not objection was raised at the time when such resolution was passed (Section 263).

In the present case, all the members passed a single resolution appointing all the directors. The resolution is void since before moving the resolution for appointment of all the directors by a single resolution, no resolution was passed to the effect that all the directors shall be appointed by a single resolution. It is immaterial that no member objected to the appointment of all the directors by a single resolution. As per section 290, the act of these directors shall not be invalidated until the defect in their appointment is discovered. But, where such defect come into the knowledge of the company, all subsequent acts of these directors shall be invalid.

However, section 263 does not apply to a private company. In the present case, if the company is a private company, the appointment of all the directors by a single resolution shall be valid.

7. Resolution is invalid. The resolution by circulation must have been approved by all the directors in India, i.e., seven directors who were in India or by majority of total number of directors who were entitled to vote, i.e., six directors.

8. Notice of every Board meeting shall be given in writing to every director for the time being in India and to every other director at his usual address in India (Section 286). As can be seen, section 286 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 as contemplated by section 283(1)(g). 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. Chander Lal, who is outside of India, shall be served at his usual address in India.

9. The following persons can make an application for investigation into the affairs of a company:

   (a) Registrar: Where a report has been made by the Registrar under sub-section (6) or sub-section (7) of section 234, the Central government may appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as it may direct.

   (b) Members: In the case of a company having a share capital, an application by not less than two hundred members or from members holding not less than one-tenth of the total voting power therein and in the case of a company having no share capital, an application by not less than one-fifth of the persons on the company's register of members has been received the Tribunal may, after giving the parties an opportunity of being heard, by order, declare that the affairs of the company ought to be investigated by an inspector or inspectors, and on such a declaration being made, the Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of the company and to report thereon in such manner as it may direct.. The application by members of a company under section 235 (2) shall be supported by such evidence as the Tribunal may require for the purpose of showing that the applicants have good reason for requiring the investigation. The Central Government may, before appointing an inspector, require the applicants to give security, for such amount not exceeding one thousand rupees as it may think fit, for payment of the costs of the investigation.

   (c) Company: By the company on passing the special resolution or by the Order of the Court, the Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of a company

   (d) Central Government, if there are circumstances suggesting

      (i) that the business of the company is being conducted with intend to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose;

      (ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

      (iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information

relating to the calculation of the commission payable to a managing or other director, or the manager, of the company.

10. As per section 394 of the Companies Act, 1956, the order of the Court sanctioning the reconstruction or amalgamation shall be sufficient to vest all the properties or liabilities in the transferee company without execution of any further document. However, the order shall not automatically transfer contracts of personal service, e.g; the services of workers cannot be transferred to the transferee company without their consent; no contract of service is created between the workers and the transferee company [Nokes v Doncaster Amalgamated Collieries Ltd. (1940) 3 All ER 549]. Therefore in the given case, workers of Godrej Ltd. will succeed against Vishal Ltd. They cannot be compelled to join Vishal Limited and therefore they shall be entitled to receive compensation.

11. Reconstruction: A reconstruction is commonly said to have taken place when a company resolves to wind up its business and it is proposed to form a new company, with only the old shareholders as its members to take over its undertaking, the rights of shareholders in the old company being satisfied by their being allotted shares in the new company. In that case, the old company ceases to exist in point of law, and its assets are transferred to the new company. It would be, nonetheless, a reconstruction even if all the assets might not pass to the company, or all the shareholders of the transferor company might not be shareholders in the transferee company, or all the liabilities of the transferor company might not be taken over by the transferee company. A reconstruction, in such a case, would imply that substantially the same persons would carry on the same business. [Re South African Supply and Cold Storage Co.(1904) 2 Ch. 286].

    How Reconstruction is effected? Reconstruction may be carried out:

    (a) by sale of the company under the powers contained in its Memorandum of Association;

    (b) by a scheme of arrangement under Section 391;

    (c) by acquiring all or a majority of the shares in another company under Section 395;

    (d) by a compulsory amalgamation of companies in the public interest by an order of the Central Government under Section 396;

    (e) by a sale under Section 494 (members voluntarily winding up); or under Section 507 (creditor's voluntarily winding up); in the former case a special resolution and in the latter case the sanction either of the Court or of the Committee of Inspection is necessary.

    (f) by a scheme of arrangement with creditors only; under Section 517 (voluntary winding up both by members and creditors), a special resolution and consent of three-fourths in value of creditors are necessary.

12. Oppression and Mismanagement

Section 399 of Companies Act, 1956 stipulates that the following members of a company shall have the right to apply under Section 397 or 398 in the case of a company having a share capital-

(1) not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less or.

(2) any member or members holding not less than one-tenth (10 per cent or more) of the issued share capital of the company, provided that the applicants have paid all calls and others sums due on their shares.

The language of Section 399 using the words 'members' and 'issued share capital' seems to suggest that preference shareholders are also eligible to make an application under section 397/398. In this case 450 members including the preference shareholders applied for relief under sections 397 and 398 and hence the number of members exceeds the prescribed minimum of 100 members, the petition is maintainable. [In this connection it is pertinent to note the language used in Section 408 is members of the company holding not less than one-tenth of the total voting power). In this case, the company is a Nidhi company, where persons having transactions with the company as depositors or borrowers allotted are generally preference shares.

It has been held in Rajahmundry Electric Supply Corporation vs. A. Nageshwara Rao 26 Comp. (as 91(SC) that validity of petition under Section 397 must be judged on the facts as they were on date of presentation and subsequent withdrawal of consent by some members does not affect the petition. Hence, even if the preference shareholders have subsequently withdrawn their consent, the petition is maintainable.

13. For a petition under section 398 of the Companies Act,1956 the complainant members are required to establish that the company's affairs are being conducted in a manner prejudicial of the public interest or in a manner prejudicial to the interest of the company.

Thus in the present case, the Company Law Board may entertain the application if complainant member is able to prima facie establish that the directors have misused their position in making certain inter-corporate deposits which are against the interest of the company.

14. For the proper discharge of the functions of the Tribunal, the Tribunal may, through any operating agency, cause to be prepared—

(a) with respect to a company a complete inventory of—

(i) all assets and liabilities of whatever nature;

(ii) all books of account, registers, maps, plans, records, documents of title or ownership of property and all other documents of whatever nature relating thereto;

(b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors;

(c) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of a part or whole of the industrial undertaking of the company or for fixation of the lease rent or share exchange ratio;

(d) an estimate of reserve price, lease rent or share exchange ratio;

(e) proforma accounts, where no up-to-date audited accounts are available.

15. (i) The court may refuse to grant winding-up order. Suspension of business for a whole year is a ground under section 433(c) seeking winding-up by the court but the power of the Court in this regard is discretionary. The Court shall refuse winding-up on this ground if the intention of the company not to resume its business is absent. Thus, in the given case, winding-up order shall not be issued. Similar decision was given under similar circumstances in the case of Murlidhar v. Bengal steamship co. ltd AIR 1920 Cal.722.

    (ii) Where the company fails to resume its operations for 5 years and prospects also seem gloomy, the Court may order the winding-up of the company [Rupa Bharati Ltd. v. Registrar of Companies [1969] Comp. L.J. 290].

16. The provisions relating to Donation or subscription by a Producer Company are contained in section 581ZH. The answers to the given problems are as under:

    (i) How to make the donation: A special resolution shall be required for making any donation or subscription.

    (ii) Purposes for which donation can be made: The donation or subscription may be made to any institution or individual for the purposes of-

        (a) Promoting the social and economic welfare of Producer Members or producers general public; or

        (b) Promoting the mutual assistance principles.

        Purposes on political contribution: A Producer Company shall not-

        (a) make any contribution or subscription to a political party;

        (b) make any contribution or subscription to any person for any political purpose;

        (c) make available any facilities including personnel or material to a political party or any person for any political purpose.

    (iii) Monetary restrictions on donations: The aggregate amount of all such donation and subscription in any financial year shall not exceed 3% of the net profit of the preceeding financial year of the Producer Company. Accordingly, in the given case, the donation in the current year shall not exceed Rs. 90,000.

17. Invariably, the Balance Sheet and Annual Return have to be filed by a company every year. Other documents such as, Return of Allotment (Form-2), Change of Registered

office (Form-18), Change among the Directors (Form-32), Charges (Form-8, 10, 17)etc., have to be filed within the due date from the events taking place in the company as per the Companies Act, 1956.

18. Section 383A of the Companies Act, 1956 provides that every company having a paid up capital of not less than the prescribed limit (presently the limit being Rs.5.00 crores) shall have a whole time secretary. The Secretary must be a member of the Institute of Company Secretaries of India.

    In view of the provision of the said section 383A, the Company, namely, Asian Ltd is under statutory obligation to have whole time Secretary since its paid up capital exceeds Rs.5.00 crores. In case, the paid up capital of Asian Ltd is less than Rs.5.00 crores, it is not necessary for it to have whole-time secretary.

    Since, its capital, as per second part of question, is Rs.3.50 crores, it is not required compulsorily to appoint whole-time secretary where the paid up share capital of a company is two crore or more but less than five crores it may appoint a whole time secretary to perform the duties of a secretary under the Companies Act, 1956 provided where a company has appointed a whole time secretary it is not required to obtain a certificate from a secretary in whole time practice.

    Thus in this case, company is not required to file a certificate from a secretary in whole time Practice if it has appointed a whole time secretary.

19. SEBI Act, 1992: Price manipulation in the shares of Planet 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 Planet Ltd.) in a recognized stock exchange.

    (ii) Restrain persons (in this case Planet 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 15 HA 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 Rs. 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 (i.e.) (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 Rs. 1 crore on any person who fails to comply with any provisions of SEBI Act (Section 15 HB).

20. (1) A recognised stock exchange may delist the securities, after recording the reasons therefor, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act:

    Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

    (2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities and the provisions of sections 22B to 22E of this Act, shall apply, as far as may be, to such appeals:

    Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month."

21. Repatriation to India [Section 2(y)]

    'Repatriate to India ' means' bringing into India the realised foreign exchange and –

    (i) the selling of such foreign exchange to an authorised person in India in exchange for rupees, or

    (ii) the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank.

    and includes use of the realised amount for discharge of a debt or a liability denominated in foreign exchange.

    Realisation and repatriation of foreign exchange (Section 8)

    Where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserved Bank.

    Exemption from realisation and repatriation (Section 9)

    The provisions of sections 4 and 8 shall not apply to the following, i.e., in the following cases the foreign exchange need not be repatriated to India:

(a) Possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify.

(b) Foreign currency account held or operated by such person or class of persons up to such limits as may by specified by the Reserve Bank of India.

(c) Foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank.

(d) Foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from.

(e) Foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means upto such limits as the Reserve Bank may specify.

(f) Such other receipts in foreign exchange as the Reserve Bank may specify.

22. According to Section 10(1) of the Competition Act, 2002, 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.

Provided that no Chairperson or other Member shall hold office as such after he has attained, -

(a) in the case of the Chairperson, the age of sixty-seven years;

(b) in the case of any other Member, the age of sixty-five years.

Based on the above provisions of the Competition Act, 2002, it can be concluded that Hon'ble retired Justice Mr. Ram Shanker can be appointed as the Chairperson of the Competition Commission of India by the Central Government initially for a period of five years and he can also be re-appointed after his initial term of five years is over. But since he shall be attaining the age of 67 years as on 31st December, 2014, he will have to step down from the post on his attaining the age of 67 years.

23. Accounts and Balance Sheet (Section 29) – Every Banking Company incorporated in India, in respect of all business transacted by it and through its branches in India, shall prepare a balance sheet and profit & loss account as on the last working day of the Accounting year (which was earlier calendar year, now April to March i.e. 31st March) in the Form "A" and "B" given in the third schedule of the Act. The amalgamated Balance Sheet and Profit Loss should be signed by the CMD and at least three Directors where there are more than three directors or where there are not more than three directors, by all the directors. In case of banking companies incorporated outside India by the principal officer of the Company in India.

The provisions of the Companies Act, 1956, relating to the balance sheet and profit and loss account of a company shall also be applicable to the profit and loss account and balance sheet of a banking company, in so far as they are not inconsistent with the provision of the Act.

(Banks also prepare balance sheet and profit & loss as of half year ending 30th, September which are not subject to Audit).

24. (i) Money Laundering: Clause (p) of sub section 1 of Section 2 of Prevention of Money Laundering Act, 2002 provides that "money-laundering" has the meaning assigned to it in section 3. Moving to Section 3, it is observed that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering.

(ii) Property: In terms of Clause (v) of sub – section (1) of Section 2 of the said act, "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

25. The given problem relates to section 292 read with section 372A

As per section 292(1)(e), the Board shall exercise the power to make loans only by means of a resolution passed at a Board meeting. However, the power to make loans may be delegated by the Board if compliance is made with all the following conditions:

(a) The powers are delegated to any of the following:

- Committee of directors
- Managing director
- Manager
- Principal officer of the company
- Principal officer of the branch office.

(b) The resolution delegating powers is passed at a Board meeting.

(c) The resolution passed at the Board meeting shall specify –

- The total amount upto which loans may be made.
- The purpose for which loans may be made.
- The maximum amount of loans for each such purpose in individual case.

Section 292(1)(e) applies to all companies, whether public or private.

As per section 372A, for making any loan to a body corporate, the approval of the Board shall be obtained by passing a resolution at a Board meeting only. Thus, circular resolution under section 289 or a resolution of committee of directors is not sufficient. However, section 372A does not apply to a private company.

The two provisions, viz; section 292(1)(e) and 372A are conflicting with each other, and therefore, harmonious interpretation should be adopted. Any head-on clash between sections 292(1)(e) and 372A should be avoided.

Applying the Rule of Harmonious Interpretation, it must be ensured that delegation of power under section 292(1)(e) does not result in a contravention of Section 372A. Thus, following conclusions may be drawn:

(a) The Board of directors of a public company cannot delegate the power to make loans to any other body corporate (i.e., the power to make intercorporate loans and investments cannot be delegated by a public company).

(b) The Board of directors of a public company may delegate the power to make loans to any other person, not being a body corporate.

(c) The Board of directors of a private company may delegate the power to make loans to any person, whether a body corporate or not.