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Answer Paper	
Corporate & Economic Laws	Duration: 75
Details: Test – 3	Marks: 40

**Instructions:**

- All the questions are compulsory
- Properly mention test number and page number on your answer sheet, Try to upload sheets in arranged manner.
- In case of multiple choice questions, mention option number only Working notes are compulsory wherever required in support of your solution
- Do not copy any solution from any material. Attempt as much as you know to fairly judge your performance.

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## **ANS-1**

### **(i) Validity of the Request of the Board of Directors**

The given problem is based on Section 11C of the Securities and Exchange Board of India Act, 1992 which deals with the provisions related to investigation of the affairs of such intermediary or persons associated with the securities market.

Where the board has reasonable ground to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; it may, at any time by order in writing, direct any person (i.e., Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

The Investigating Authority may during the investigation keep in its custody any books, registers, other documents and record produced for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced.

Where the Investigating officer who has taken over the charge and custody of books and documents is unable to complete the investigation within 180 days, he shall return the same to person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced. The Investigating Authority may call for any book, register, other document and record if they are needed again.

As per the provision, Board of Directors of the Company need not require to file an application with SEBI to return the books and documents. The investigating Authority, Mr. Ganesh may keep books and documents during the investigation for six months under his custody and thereafter shall return the same.

**Punishment:** If during the investigation, one of the director without reasonable cause, refused to answer and produce the books and documents, such person shall be punishable with:

Imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

(ii) As per the Section 11D of the Securities and Exchange Board of India Act, 1992 the term “Cease and desist proceedings” means that if the Board finds, after causing an enquiry to be made, that any person has violated, or is likely to violate, any provision of this Act, or any Rules or Regulations made thereunder, it may pass an order requiring such person to cease and desist from committing or causing such violation.

Yes, as the per proviso to the said section, where the Board has reasonable grounds to believe that any listed public company has indulged in insider trading or market manipulation, such proceedings can be initiated against it for violation of insider trading.

(6 Marks)

#### **ANS-2**

(i) As per Section 234(3) of the Companies Act, 2013, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a Company registered under this Act or vice versa as per the scheme to be drawn up for the purpose. Therefore, the contention of CFO of the M/s Artha Rubber Sheets Manufacturing and Trading Ltd. (Indian Company) is incorrect.

(ii) According to Section 230(3) of the Companies Act, 2013, where a meeting is proposed to be called in pursuance of an order of the Tribunal, a notice of such meeting shall be sent to all the creditors / class of creditors and to all the members / class of members and the debenture-holders of the company. Where, at a meeting, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an Order, the same shall be binding on the Company, all the creditors, or class of creditors or members or class of

members, as the case may be, or, in case of a Company being wound up, on the liquidator, and the contributories of the Company.

As the expression used is 'members', not only holders of equity shares but preference shareholders will have to be taken into account or, if the meeting of holders of preference shares and equity shares are ordered by the tribunal to be held separately, the three-fourths majority of each class will be ascertained separately. Where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable.

(5 marks)

**ANS-3**

**(i) Audit Committee:** According to Regulation 18 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, every listed entity shall constitute a qualified and independent audit committee which shall have:

(a) Minimum three directors as members.

(b) Two-thirds of the members of audit committee shall be independent directors.

(c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

**(ii)** As per the facts of the question, M/s Apex Limited, listed its securities in a recognized stock exchange in the month of January, 2020. In order to comply with the requirements of SEBI (Listing Obligations and Disclosure Requirements), 2015, the company requires to do the following:

A. The audit committee of M/s Apex Limited already has 3 directors as members, which is in compliance.

B. The audit committee has 3 directors which are Non-Independent. However, once the company gets listed, at least 2 [ $3 \times (2/3)$ ] directors shall be independent directors. Thus, they need to change the composition of audit committee once the company gets listed on stock exchange.

C. In the existing audit committee through majority of the members have the ability to read and understand the financial statement but none of them has accounting or related financial management expertise. However, once the company gets listed it is required that all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise. Hence, it is required that the company should appoint at least one member in the audit committee who shall have accounting or related financial management expertise.

In view of above, the existing audit committee cannot continue after listing of its securities.

According to Section 177 (1) of the Companies Act, 2013 and rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, if the Company was required to have the audit committee, the existing audit committee is also not in order as it does not have majority of the members as independent directors.

**(5 Marks)**

#### **ANS-4**

Section 244 of the Companies Act, 2013 provides for the eligibility of members who hold the right to file the application under Section 241 for oppression and mismanagement with the Tribunal.

Members having right to apply:

The following members of a company shall have the right to apply under Section 241, namely:-- in the case of a Company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the Company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

In the instant case, not less than 100 members ( $1/10$  of 5000 or 100, whichever is lower) have the right to apply to the Tribunal.

Due to fresh issue of shares, the shareholding of the members who filed the petition gets reduced to below 10 per cent, which is challenged as oppressive. The maintainability of the petition would be reduced after determining the validity of the issue of allotment. The petition shall be maintainable and the petitioner-member shall be entitled to relief.

It was observed in decided case law, that the oppression complained off must affect a person in his capacity or character as a member of the company: harsh or unfair treatment in other capacity, e.g., as a director or a creditor is outside the purview of this chapter i.e. for filing the petition or application for oppression and mismanagement.

Thus, Mr. Dina, one of the directors of Arctic Refrigerators Limited cannot file an application for oppression and mismanagement.

**(5 marks)**

**ANS-5:**

Section 230 of the Companies Act, 2013 contains the powers of the Tribunal on the filing of application for the Compromise or Arrangement. According to this section:



(i) Filing of Compromise Application:

Where a compromise or arrangement is proposed between-

(a) a Company and its Creditors or any class of them; or

(b) a Company and its Members or any class of them, the Tribunal may, on the application of the

- Company, or
- Creditor, or
- Member of the Company, or
- Liquidator in case of Company is into voluntary liquidation order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation- For the purposes of this sub-section, arrangement includes a reorganization of the Company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(ii) Disclosures by Applicant: The Company or any other person, by whom an application is made, shall disclose to the Tribunal by affidavit-

- (a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the Company and the pendency of any investigation or proceedings against the company;
- (b) Reduction of share capital of the Company, if any, included in the compromise or arrangement;
- (c) Any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value, including
  - (i) A creditor's responsibility statement in the prescribed form;
  - (ii) Safeguards for the protection of other secured and unsecured creditors;

- (iii) Report by the Auditor that the fund requirements of the Company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;
- (iv) Where the Company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect;
- (v) A Valuation Report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

(5 marks)

**ANS-6**

As per Companies Act, 2013, members may apply to the Tribunal in cases of oppression and mismanagement. However, bona fide decisions consistent with the company's memorandum and articles are not to be equated with mismanagement even if they turn out to be wrong in the circumstances or these cause temporary losses. The Court will not permit the machinery created by the sections to be used by the minority for compelling the majority to come to terms, where the company is honestly managed. Directors' bona fide decision not to declare dividend and to accumulate available profits into reserves is not mismanagement.

Thus in the given case, the group of members who complain to Tribunal against the decision of the Board not to declare any dividend and to accumulate available profits into reserves, would not succeed, as the act of directors does not amount to mismanagement. Furthermore, the shareholders cannot compel the Board to recommend a dividend. The Board's recommendations are placed in the general meeting. In the general meeting company can reduce the dividend, but cannot increase the dividend recommended by the Board. Therefore, the members cannot compel the company to declare dividend and cannot charge the directors with oppression and mismanagement.

Applying the above, answers to the question shall be as.



(1) The contention of members shall not be tenable.

(2) The act of the Board of directors who acted bona fide, not to recommend any dividend shall not amount to oppression or mismanagement.

**(4 marks)**

**ANS-7: MCQ**

1. (c) Opinion of the Company Secretary of the ETERNAL Ltd. is invalid as the provisions given for fast track merger in the section 233 are of the optional nature.

2. (d) No, as Ram was not eligible under section 244 of the Companies Act, 2013 to make application to tribunal, but for any case legal heir being minority can make application to tribunal.

3. (c) Yes, it is insider trading and penalty u/s 15G would be minimum Rs. 10 lacs which may extend upto Rs.25 cr. or 3 times of profit derived, whichever is higher.

**(2×3 = 6 Marks)**

4. (a) 3<sup>rd</sup> July 2019

5. (b) Has taken place; any class of members

6. (a) Yes scheme of compromise and arrangement get proper approval of 3/4th of value of members or class or members.

7. (c) All acts are valid as per section 8 of the SEBI Act, 1992.

**(1×4 = 4 Marks)**