

32.5 marks

5 marks

The provisions related to investigation of affairs of such intermediary & person is given u/s 11C of SEBI Act 1992.

This is an error-free answer. Good job!

Where the Board has reasons to believe that the transactions in securities are dealt with in a manner detrimental to the interest interests of investors or securities market, it may at any time, by order in writing direct any person (Investigation Authority) to investigate into the affairs of such intermediary or person associated with Securities market and to report to the Board thereon.

The Investigation Authority during investigation can keep in its custody any books, registers, other documents and record produced for 6 months and thereafter return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, and other documents and records are produced. The Investigation Authority may call for any books, registers,

other document and record if they are needed again.

If during investigation if any director refuses to answer and produce books and documents without reasonable cause, he shall be punishable with:

- imprisonment for a term which may extend to one year, or
- a fine which may extend to 1 crore rupees, or
- with both.

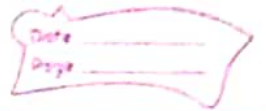
And also with further fine which may extend to 5 lakhs rupees per day after the first day during which such refusal continues.

In the given case, Mr Ganesh can keep in his custody book and document for 180 days and thereafter return them. There is not need of BoD to file application to SEBI to return books and documents.

(11) As per SEBI Act, 1992, 'Cease and Desist proceedings' means if the Board finds out, after causing an inquiry to be made, that any person has violated, or is likely to violate

any provision of this Act, or Rules and Regulations made thereunder, it may pass an order requiring such person to cease and desist from committing or causing such violation.

Yes, if Board has reasonable ground to believe that any public listed company has engaged in insider trading or market manipulation, such proceedings can be initiated against it for violation of insider trading.



2. (i) As per Section 234 of the Companies Act, 2013 a foreign company may, with prior approval of RBI, merge into a Company regd. under this Act or vice versa as per the scheme drawn up for the purpose. Therefore, the contention of CFO of Indian Company is invalid.

This has been profoundly answered by you.

- (ii) As per Section 230, where meeting has been called in pursuance to the order of the tribunal, & notice of such meeting shall be sent to all creditors/class of creditors, & to all members/class of members & debenture holders of the company.

Where, at a meeting, majority of persons representing $3/4^{\text{th}}$ of value of the creditor or class of creditors or members or class of members, as the case may be, voting in person, by proxy or by postal ballot, agree to any compromise or arrangement sanctioned by tribunal by an order, the same shall be

binding on the creditors or class of creditors, member or class of members, as the case may be, or in case the company is being wound up, the liquidator and contributories of the company.

The 'member' term includes both equity and preference shareholders. Where meeting of pref and equity shareholders is ordered to by Tribunal to be conducted separately, $\frac{3}{4}$ th of each meeting shall be ascertained separately.

3.11) According to SEBI (LODR) Regulations 2015: every cor listed entity should constitute an independent and qualified Audit Committee which shall have.

- Minimum 3 directors as members.
- $\frac{2}{3}^{\text{rd}}$ of members shall be Independent Directors
- All members shall be financially literate and at least one member shall have accounting or related Financial mgmt. expertise

(11) In the given case, M/s Apex Ltd listed in recognised stock exchange, has to do following to comply with SEBI regulation

Refer Section 177 (1)

- It has minimum no. of directors in the Audit Committee, i.e., 3.
- $\frac{2}{3}^{\text{rd}}$, i.e., 2 director should be Independent. M/s Apex Ltd need to change its composition of audit committee.
- In its Audit Committee, majority of members have

ability to read & understand financial statement but none of them has accounting or financial management expertise. Therefore, it need to appoint atleast 1 member in its Audit Committee having accounting or financial mngt expertise.

Hence, M/s Apex Ltd. cannot continue to with its given Audit Committee after listing of Securities.

4. According to Section 241 of the Companies Act, 2013 following members shall file application for oppression and mismanagement with Tribunal:

You're truly mastering this

→ In case of company having share capital

- 100 members of the company, OR
- $\frac{1}{10}^{\text{th}}$ of the total numbers of members,

whichever is less, or any member or members holding not less than $\frac{1}{10}^{\text{th}}$ of issued share capital subject to the condition all calls have been paid on their shares.

In the given case, not less than 100 members ($\frac{1}{10}$ of 5000 or 100, however) have the right to apply to Tribunal.

Due to fresh issue of shares, the shareholding of company is reduced below 10% of paid up sh capital, which is an oppressive act. The maintainability of petition is reduced after determining the validity of the issue of

allotment. The petition is maintainable and the petitioners shall be entitled to relief.

As per a case law, the oppression complained of must affect a person in his capacity as a member of the company.

Thus, Mr Dina, Director of company cannot file an application for oppression and mismanagement.

5 (i) As per Section 230 of the Companies Act, 2013 where a compromise or arrangement has been proposed between

: Company & its creditors / class of creditors ; or

: Company & its members / class of members

This exhibits commendable enhancement

the Tribunal may, on an application made by company or, creditor or member of the company, or in case company is being wound up liquidator order a meeting of creditors / class of creditors, or of the members / class of members, to be held, and conducted in manner the Tribunal directs.

(ii) The company or any other person, by whom application is made, shall disclose to the Tribunal by affidavit:

(a) all material facts relating to company such as the latest financial statement, auditor's report and ^{any} pending investigation or proceedings against the company.

(b) reduction of share capital included in compromise or

arrangement.

- (c) Any corporate debt restructuring scheme consented by at least 75% of creditor's in value, including
- creditor's responsibility statement
 - Safeguards for protection of other secured or unsecured creditors
 - Auditor Report that the fund req. after restructuring shall conform to the liquidity test
- (d) Where corporate debt restructuring guidelines specified by RBI, Statement to that effect; and
- (e) Valuation Report by a regd valuer

6. As per the Companies Act, 2013 members can may apply to the tribunal in cases of oppression and mismanagement. However, bonafide decisions consistent with company's Memorandum and articles of association cannot amount to mismanagement even if they turn out to be wrong in circumstances and lead to losses. This Section cannot be used to compel the majority to come into terms with minority, where the decision by Board is bonafide. Hence, the Director's bonafide not to recommend dividend for the year does not amount to mismanagement.

Considering the above provision,

- (1) The contention of members shall not be tenable.
- (2) The act of BoD not to recommend any dividend shall not amount to oppression and mismanagement.

9 MARKS

- 7.
- 1 (c) ✓
 - 2 (d) ✓
 - 3 (c) ✓
 - 4 (d) ✓
 - 5 (b) ✓
 - 6 (a) ✓
 - 7 (c) ✓