Solutions of CA-FINAL LAW MAY 2013 Paper

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1(a) Section 209 (4) of the Companies Act 1956 provides that the books of account and other books and papers shall be open to inspection by any director during the business hours.

The right of inspection given by this sub-section is not so restricted that it can only be exercised personally by the director in ***Vakharia Vs Supreme General Film Exchange Co. Ltd*** it was held that a director is entitled to take inspection of accounts personally or through an agent provided that there is no reasonable objection to the person chosen and the agent undertakes not to utilize the information obtained by him for any purpose other than the purpose of his principal.

As the right of inspection is a statutory right given under this sub-section, a director who is prevented from or refused inspection may enforce his right through court. As such, Mr. Ramanujam being the director, can appoint Mr. Anandraja to inspect the Books of accounts of the company.

In other words, Debari Food Processing Limited cannot refuse to allow Mr. Anandraja to inspect the books of accounts.

But such a right is restricted to diectors only. No member (Not being a director) shall have any right to inspection any account or books or document of the company except as conferred by law or authorized by the board or by the company in general meeting.

1(b) Section 399 of the Companies Act, 1956 provides the right to apply to the Company Law Board for relief against oppression and mis-management.

This right is available only when the petitioners hold the prescribed limit of shares as indicated below :

(i) In the case of company having a share capital, not less than 100 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, provided that the applicant(s) have paid all calls and other dues on the shares.

(ii) In the case of company not having share capital not less than one-fifth of the total number of its members.

In the given case, Since the number of petitioners are 90 members, i.e. more than 10% of total number of members, therefore the petition is maintainable.

Also, the proceedings shall continue irrespective of withdrawl of consent by some petitionrers. It has been held by the Supreme Court in **Rajmundhry Electric Corporation Vs. V. Nageswar Rao, AIR (1956) SC** that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition. Thus, the validity of the petition must be judged on the facts as they were at the time of presentation. Neither the right of the applicants to proceed with the petition nor the jurisdiction of Company Law Board to dispose it of on its merits can be affected by events happening subsequent to the presentation of the petition.

1(c) According to Section 295 of the Companies Act, no public company shall make any loan to any of its directors either directly or indirectly without obtaining the previous approval of the Central Government. As the Act envisages prior approval, Central Government will not entertain any application from the company seeking approval for a loan already given to its director.

In the given problem, Fatehnagar Textiles Limited and its director, Mr. Gopalsunderam has, therefore, contravened the provisions of Section 295(1) and for this offence every person who is knowingly a party to this contravention including the person to whom the loan is made shall be punishable either with fine which may extend to ` 50,000 or with simple imprisonment for a term which may extend to six months [Section 255(4)].

Where any such loan has been repaid in full, no punishment by way of imprisonment shall be imposed and where the loan has been repaid in part, the maximum punishment, which may be imposed by way of imprisonment, shall be proportionately reduced. So, by refunding the loan in full, it is possible for Mr. Gopalsunderam to avoid punishment in the form of imprisonment, but it is not possible to a avoid prosecution and punishment in the form of fine.

1(d) SEBI can exercise the following powers under Securities Contracts (Regulation) Act, 1956 on receipt of serious complaints against the affairs of a member of a stock exchange.

(i) SEBI may, if it is satisfied that it is in the interest of the trade or in the public interest, by order in writing call upon the member of the stock exchange to furnish in writing information or explanation in respect of the matter under inquiry *[Section 6(3)(a)].*

(ii) SEBI instead of calling for information, may either appoint one or more persons to make an enquiry or direct the governing body of stock exchange to make inquiry and submit its report to SEBI *[Section 6(3)(b)].*

In case of adverse fundings, SEBI can direct stock exchange to take disciplinary action against the member such as fine, expulsion from membership, suspension from membership for a specified period and any other penalty of a like nature not involving the payment of money. Bye-laws of the stock exchange usually provide for such punishment [Section 9(3)(b)]. Stock exchange is under obligation to take the action as directed.

2(a) Hi-tech Engineering limited can demerge its cement manufacturing business in favour of Premier Cement Limited by obtaining the approval of National Company Law Tribunal (NCLT) [earlier such power was vested in High Court and the High Court can continue to exercise such power till the CLT becomes fully functional] as provided in Section 394 of the Companies Act, 1956. For this purpose, Hi-tech Engineering Limited is required to take the following steps :

1. Hi-tech Engineering limited, known as "transferor Company" for this purpose, has to prepare a scheme under which its properties and liabilities in respect of cement manufacturing business will be transferred to Premier Cement Limited, known as "Transferee Company" for this purpose. Such scheme must contain the consideration for transfer, known as "Exchange Ratio".
2. An application under Section 391(1) of the said Act must be made to NCLT / High Court for an order convening meetings of creditors and / or members.
3. Notice(s) of the meeting(s) must be sent to members/creditors as per the direction of NCLT/ High Court. Such notice must be accompanied by a statement under Section 393(1) of the said Act setting forth the terms of the compromise or arrangement and explaining its effect in general and in particular, the effect on the interests of Managerial Personnel.
4. To hold the said meetings and pass necessary resolution approving the scheme subject to the conformation of NCLT/ High Court. It may be noted that the resolution must be passed by a majority in number representing 3/4th in value of the members / creditors as required under Section 391(2) of the said Act.
5. Thereafter, Hi-tech Engineering limited is required to move to NCLT / High Court jointly with Premier Cement Limited for approval of the scheme disclosing all material facts relating to the Company. [Proviso to Section 391(2)], the High Court as required under Section 394A shall give notice to the Central Government and shall take into consideration any representation received from Central Government before passing any order on the application made to it for approval of the scheme.
6. On receipt of NCLT's / High Court's order, Hi-tech Engineering limited is required to file a certified copy of the order with the Registrar of Companies (ROC) for registration within 30 days after making of the order by NCLT / High Court [Section 394(3)]. This is very important since the non- filing of the order with ROC would make the approval order ineffective.
7. Lastly, to proceed to give effect to the scheme as approved by NCLT / High Court in the manner as directed by it.

2(b) The legal requirements to be complied with by a public company in respect of a Board Meeting are as follows :

(1) Frequency or Periodicity of the Board Meetings

As per Section 285, a company must hold a meeting of its Board of Directors at least once in every three calendar months and there should be at least four directors' meeting every year.

(2) Notice of the Board Meetings

Notice of every Board meeting has to be served in writing on each director for the time being in India, and at his usual address in India to every other director. Every officer of the company whose duty is to serve the notice as aforesaid and who fails to do so shall be punishable with fine extending to ₹100 (Section 286).

(3) Quorum

According to the section 287, 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.

(4) Adjournment of the meeting

As per Section 288 of the Act, if a meeting of the board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the 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, at the same time and place.

(5) Minutes of the board meeting

The minutes of the Board Meeting are required to be written within a period of 30 days from the date of the meeting held. [Section 193(1)]. But there cannot be any insistence that the same must be signed within a period of 30 days from the date of the Board Meeting. According to section 193(1A), the minutes of a Board Meeting may be signed by the Chairman of the said meeting or the Chairman of the next succeeding meeting.

(i) *Alternative Director*

Yes, notice of Board Meeting is required to be sent to an alternative director in writing to for the time being in India and at his usual address in India .

(ii) *An interested director*

Yes, notice of Board Meeting is required to be sent to an interested director in writing to for the time being in India and at his usual address in India.

(iii) *A director who has expressed his inability to attend a particular Board Meeting*

Yes, notice of Board Meeting is required to be sent even to a director who has expressed his inability to attend a particular Board Meeting in writing to for the time being in India and at his usual address in India.

(iv) *A Director who has gone abroad*

Yes, notice of Board Meeting is required to be sent even to a director who has gone abroad in writing to for the time being in India and at his usual address in India.

3(a) The particulars of Employees required to be furnished under section 217(2A) are as follows :

1. The Board's report shall also include a statement showing the name of every employee of the company who :
   (a) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than ₹24,00,000 per year or
   (b) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than ₹ 2,00,000 per month as may be prescribed ;
   (c) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two per cent, of the equity shares of the company.
2. The statement referred to in clause (a) shall also indicate :
   (a) whether any such employee is a relative of any director or manager of the company and if so, the name of such director, and
   (b) such other particulars as may be prescribed.

   "Remuneration" has the meaning assigned to it in the Explanation to section 198.

The Auditor reports on the Balance Sheet and every document annexed thereto. According to section 222 references to documents to be annexed does not include the Board's report. As the particulars of employees forms part of the Balance sheet, the auditors need not verify or report thereon.

3(b) **(i) Section 72 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009**

This section deals with the conditions to be complied with by the Company to give effect to the proposed preferential issue of equity shares to the promoters of the company.

The conditions for preferential issue are as follows :

(1) A listed issuer may make a preferential issue of specified securities, if :
   (a) a special resolution has been passed by its shareholders.
   (b) all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form.
   (c) the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed;
   (d) the issuer has obtained the Permanent Account Number of the proposed allottees.

(2) The issuer shall not make preferential issue of specified securities to any person who has sold any equity shares of the issuer during the six months preceding the relevant date:

(3) In respect of the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, the Board may grant relaxation from the requirements subregulation, if the Board has granted relaxation in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to such preferential allotment.

(ii) Section 76 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

This section deals with the price at which the proposed preferential issue of equity shares to the promoters of the company can be made.

The provisions in relation to pricing of equity shares are :

(1) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of six months or more as on the relevant date, the equity shares shall be allotted at a price not less than higher of the following :
   (a) The average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during the six months preceding the relevant date ; or
   (b) The average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(2) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than six months as on the relevant date, the equity shares shall be allotted at a price not less than the higher of the following :

(a) the price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, pursuant to which the equity shares of the issuer were listed, as the case may be; or

(b) the average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during the period shares have been listed preceding the relevant date; or

(c) the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(3) Where the price of the equity shares is determined in terms of sub-regulation (2), such price shall be recomputed by the issuer on completion of six months from the date of listing on a recognised stock exchange with reference to the average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during these six months and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

(4) Any preferential issue of specified securities, to qualified institutional buyers not exceeding five in number, shall be made at a price not less than the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(iii) Section 78 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

This section provides the lock-in period in respect of shares allotted on preferential basis to promoters.

The provision in respect of lock-in period of specified securities are :

(1) The specified securities allotted on preferential basis to promoter or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to promoter or promoter group, shall be locked-in for a period of three years from the date of allotment of the specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be.

Provided that not more than twenty per cent. of the total capital of the issuer shall be locked-in for three years from the date of allotment.

Provided further that equity shares allotted in excess of the twenty per cent. shall be locked-in for one year from the date of their allotment pursuant to exercise of options or otherwise, as the case may be.

(2) The specified securities allotted on preferential basis to persons other than promoter and promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to such persons shall be locked in for a period of one year from the date of their allotment.

(3) The lock-in of equity shares allotted pursuant to conversion of convertible securities other than warrants, issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in.

(4) The equity shares issued on preferential basis pursuant to a scheme of corporate debt restructuring as per the Corporate Debt Restructuring framework specified by the Reserve Bank of India shall be locked-in for a period of one year from the date of allotment.

Provided that partly paid up equity shares, if any, shall be locked-in from the date of allotment and the lock-in shall end on the expiry of one year from the date when such equity shares become fully paid up.

(5) If the amount payable by the allottee, in case of re-calculation of price under sub-regulation (3) of regulation 76 is not paid till the expiry of lock-in period, the equity shares shall continue to be locked in till such amount is paid by the allottee.

(6) The entire pre-preferential allotment shareholding of the allottees, if any, shall be locked-in from the relevant date upto a period of six months from the date of preferential allotment.

4(a) In accordance with the provisions of Section 274(1)(g) a person shall not be capable of being appointed as director of a company if such person is already a director of a public company, which :–

(A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999;

(B) has failed to repay its deposit or interest on due date or redeem its debentures on due date or pay dividends and such failure continues for one year or more.

Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of 5 years from the date on which such public company, in which he is a director failed to file annual accounts and annual returns under this clause.

Here Mr. Kishore is a director of AB Ltd.

AB Ltd was regular in filing annual returns but did not file annual accounts (i.e. Balance sheet and profit and loss accounts) for the 3 continuous financial years ending 31st March 2009, 2010 and 2011. The disqualification specified in 274(1)(g)(A) will not apply unless the company has committed defaults in respect of both the matters i.e annual returns and annual accounts for three consecutive financial years. Hence Section 274(1)(g)(A) is not attracted in this case.

Also AB Ltd. failed to pay interest on term loan taken from a public financial institution from 01.04.2011 onwards and also failed to repay matured deposits from 01.04.2012 onwards. The disqualification specified in sub-clause (B) will not apply because default in respect of loans from public financial institution is not covered under section 276(1)(g)(B).

But as AB Ltd. has failed to repay its deposits on due date and the failure continues for more than one year as on September 2013, Mr. Kishore is disqualified under section 274(1)(g)(B).

(i) The disqualification would come into operation only at the time of appointment or reappointment of Mr. Kishore as director on any public company after the default has become effective. Till such time, Mr. Kishore can continue to hold the office of director in all public companies in which he is a director. He need not vacate the office of director in AB Ltd and PQ Ltd. as there is no such requirement either in section 274(1)(g) or section 283 (Section 283 stipulates the circumstances under which the office of a director shall become vacant).

But Mr. Kishore cannot seek reappointment in PQ Ltd when he retires by rotation at the AGM to be held in September, 2013.

(ii) Mr. Kishore is also not eligible to be appointed as additional director in XY Ltd. in June 2013.

4(b) "RESOLVED THAT Mr. Wahid who fullfills the conditions specified in Parts I and Part II of Schedule XIII to the Companies Act, 1956 be and is hereby appointed as the Managing Director of the company for a period of five years effective from 1st May, 2013 and that he may be paid remuneration by way of salary, commission and perquisites in accordance with Part II of Schedule XIII of the Act, subject to approval of the Central Government.

The remuneration paid to Mr. Wahid is as follows :

a. Salary

Rs. 1 lakh per month.

b. Allowance

Allowances, like house rent allowance, leave travel Allowance, Leave travel Allowance, personal allowance special allowance and /or any other allowance as determined by board.

c. Incentive

As determined by the Board for each year but not exceeding the annual salary.

d. Perquisites

(i) Accommodation	:	Furnished/ unfurnished accommodation to be provided by the company free of cost.
(ii) Medical reimbursement	:	Rs. 10,000 per month for Mr. Wahid and his family.
(iii) Club fees	:	Subscription fees & Entrance fees for club subject to the company's rules in force from time to time.
(iv) Provident fund	:	Contribution to the provident Fund in accordance with the approved scheme of the company.
(v) Gratuity	:	Gratuity payable in accordance with the rules of the approved scheme of the company as in force from time to time.
vii) Leave Travel concession	:	LTC to be given to Mr. Wahid and his family.
viii) Personal Accident Insurance	:	A policy for personal accident insurance to be taken for Mr. Wahid for an amount of ₹10 lakh.

RESOLVED FURTHER THAT in the event of loss or inadequacy of profits the salary payable to him shall be subject to the limits specified in Schedule XIII".

Sd.
Board of Directors
Morbani Woods Ltd.

5(a) The term 'misfeasance' has not been defined in the Companies Act, 1956. It can be considered as an act or omission in the nature of breach of trust in relation to the company which causes losses or injuring to the company. Although loss to the company has not been expressely stated in Section 543 nevertheless such 'loss' has to be implied in case of misapplication or retainer. Only such an act of misfeasance as results in the loss to the company will fall within the ambit of section 543.

This section empowers the Central Government to bring about action for :

(i) the recovery of damages in respect of fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs of such company or other body corporate; or

(ii) the recovery of any property of such company or other body corporate, which has been misapplied or wrongfully retained.

As regards the second question, in case of death of the directors, the *Supreme Court* held in **Official Liquidator vs. Parthasarthy Sinha (1983)** that the proceedings commenced against the delinquent director of a company liquidation under section 543 can be continued after his death against his legal representatives and the amount declared to be due in such misfeasance proceeding can be realized from the estate of the deceased on the hands of his legal representatives. The Court further held that the legal representatives would not, however, be liable for any sum beyond the value of the estate of the deceased in their hands. Hence the misfeasance proceeding can be continued against the legal representatives of A.

5(b) As per the provisions of Banking Regulation Act, 1949, the various sections are as follows :

Accounts and balance-sheet (Sec.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.

Note : **(1)** 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.

(2) Notwithstanding anything to the contrary contained in sub-section (3) of section 210 of the Companies Act, 1956, the period to which the profit and loss account relates shall, in the case of a banking company, be the period ending with the last working day of the year immediately preceding the year in which the annual general meeting is held.

(3) The Central Government, after giving not less than three months' notice of its mention so to do by a notification in the Official Gazette, may from time to time by a like notification amend the Form set out in the Third Schedule.

Signing of Balance Sheet and P&L A/c

The balance-sheet and profit and loss account shall be signed :

(a) *in the case of a banking company incorporated in India,* by the manager or the principal officer of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors, by all the directors, and

(b) *in the case of a banking company incorporated outside India,* by the manager or agent of the principal office of the company in India.

Filing of copies of balance-sheets and accounts to be sent to registrar

Where a banking company in any year furnishes its accounts and balance-sheet in accordance with the provisions of section 31, it shall at the same time send to the registrar three copies of such accounts and balance sheet and of the auditor's report.

Note : **(1)** Where such copies are so sent, it shall not be necessary to file with the registrar, copies of the accounts and balance-sheet and of the auditor's report, as required by sub-section (1) of section 220 of the Companies Act, 1956.

(2) When any additional statement or information in connection with the balance-sheet and accounts furnished under section 31 is required, the banking company shall, when supplying such statement or information, send a copy thereof to the registrar.

6(a) **(i)** As per section 581ZK of the Companies Act, 1956, The Board may, subject to the provisions made in articles, provide financial aid to the Members of the Producer Company by way of :

(a) credit facility, to any Member, in connection with the business of the Producer Company, for a period not exceeding six months;

(b) loans and advances, against security specified in articles to any Member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances.

Note : Any loan or advance to any director or his relative shall be granted only after the approval by the members in general meeting.

Thus, Southern India Sugar Producer Company Limited can make a loan of ₹2 lakh to Mr. Ram and ₹1 lakh to Mr. Shekhar, a Director of the company, subject to the above conditions.

(ii) Section 581 ZL provides the provisions for investment in other companies, formation of subsidiaries which are as follows :

(1) The general reserves of the company should be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government or co-operative or scheduled bank or in such other mode as may be prescribed.

(2) The Company may also acquire the shares of another Producer Company.

(3) Any Producer Company may,

(i) subscribe to the share capital of, or

(ii) enter into any agreement or other arrangement

whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the Producer Company. This may be done by passing a special resolution in this behalf.

(4) Any Producer Company, either by itself or together with its subsidiaries, may invest, by way of subscription, purchase or otherwise, shares in any other company, other than a Producer Company, specified in sub section (2) or subscription of capital under sub section (3) for an amount not exceeding thirty per cent. of the aggregate of its paid-up capital and free reserves. A Producer Company may, by a special resolution passed and with prior approval of the Central Government, invest more than the limits specified in this section.

(5) All investments made should be consistent with the objects of the Producer Company.

(6) The Board may, with the previous approval of members by a special resolution, dispose of any of its investments referred to under sub sections (3) and (4).

(7) Every Producer Company shall maintain a register containing particulars of all the investments, showing the names of the companies in which shares have been acquired, number and value of shares; the date of acquisition; and the manner and price at which any of the shares have been subsequently disposed of.

(8) The register referred to in sub-section (7) shall be kept at the registered office of the Producer Company and the same shall be open to inspection by any member who may take extracts there from.

Therefore, Southern India Sugar Producer Company Limited can make investment of ₹3 lakh in the equity shares of XYZ Marketing Limited subject to the above conditions.

6(b) *"Foreign company"* as per Section 591 of the Companies Act 1956, means a company incorporated outside India but having a place of business in India. Accordingly, to qualify as 'foreign company' a company must have both the following features :

(a) it should be a company incorporated outside India; and

(b) it should have a place of business in India.

As per section 602(e) provides that the expression 'place of business' includes a share transfer or share registration office.

(i) A company incorporated outside India having a share registration office at New Delhi is a foreign company.

(ii) A company incorporated outside India carrying on business outside india is not a foreign Company. All shareholders being Indian citizens is immaterial. In order to be a foreign company it has to have a place of business in India.

(iii) A company incorporated in India but all shares held by foreigners is not a foreign company. In order to be a foreign company it has be incorporated outside India and have a place of business in India.

An IDR is an instrument denominated in Indian Rupees in the form of a depository receipt created by a Domestic Depository (custodian of securities registered with the Securities and Exchange Board of India) against the underlying equity of issuing company to enable foreign companies to raise funds from the Indian securities Markets.

Pursuant to the Section 605 A of the Companies Act, 1956, Central Government notified the Companies (Issue of Indian Depository Receipts) Rules, 2004 (IDR Rules) . According to these rules, a foreign company can access Indian securities market for raising funds through issue of Indian Depository Receipts (IDRs). Also SEBI issued guidelines for disclosure with respect to IDRs and notified the model listing agreement to be entered between exchange and the foreign issuer specifying continuous listing requirements.

Conclusively, a company incorporated outside India having a share registration office at New Delhi under *(i)* above is a foreign company and only it can issue Indian Depository Receipts under the provisions of the Companies Act, 1956.

7(a) Mr. Kishore has been in India for less than 182 days during the year 2009-2010. Therefore he is a person resident outside India during the year 2010-2011.

Also Mr.Kishore left India on 30th April, 2011 for the purpose of employment. But he was in India throughout the year 2010-11 and thus he is a person resident in India during the year 2011-2012.

7(b) As per *Section 5* of the Competition Act, 2002, the provisions in respect of acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if :

(a) any acquisition where

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,-

(A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars; including atleast rupees fifteen hundred crores in India.

(ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,-

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India or turnover more than six billion US dollars including at least rupees fifteen hundred crores in India.

Since the enterprise created as result of the amalgamation of Bombay Textiles Limited and Gujarat Textiles Limited will have assets of value ₹300 crore and turnover of ₹1000 crore the provisions of the Competition Act, 2002 will not be attracted.

7(c) No, Money laundering does not mean just siphoning of fund. It actually refers to a whole process or an entire system by which money is actually generated from serious crimes, but they are given such shape (by disguising its origin into a series of transactions) that it looks like it has originated from legitimate sources.

The point to note is that the volume of money generated by above activities is also very huge. But the fact remains how does it effect us. The answer lies in observing the continuous increase in terrorist or militant or other criminal activities worldwide (wide spreading global network of terrorists and others who deal in above crimes) and we cannot be ignorant to the fact that such activities need huge funding and they generate large volume of money. To curb the criminal activities, one needs to follow and hit at this generation and utilization of revenue. Prevention of Money Laundering Act, 2002 aims to achieve this.

For example, a criminal may deposit all his money into a bank account or purchase a fixed deposit or even buy a property. But sudden appearance of such a transaction, invites the attraction of one and all. Hence he may resort to money laundering by making cash purchases from the market and then selling the goods in the legal manner and at the end create an impression that the money has come from the sales and not from the criminal activities. So the money has been disguised by entering into a series of transactions and its origin now looks legitimate.

Significance and aim of Prevention of Money Laundering Act, 2002

Prevention of Money Laundering Act, 2002 or more commonly known as PMLA 2002 came into force w.e.f 1st July 2005. It extends to the whole of India. It aims at combating channellising of money into illegal activities, provides for attachment and seizure of property and records, stringent punishment, including rigorous imprisonment of upto 10 years and fine of upto ₹ 5 lakh.

The preamble to the Act provides that it aims to prevent money–laundering and to provide for confiscation of property derived from, or involved in money–laundering and for matters connected therewith or incidental thereto. The legislation is very recent and will certainly have a far reaching impact. The fact that such legislation has been drafted, passed and notified indicates the desire of the system to become neat and clean.

In order to further strengthen the existing legal framework and to effectively combat money laundering, terror financing and cross-border economic offences, an amendment Act, 2009 was passed which seeks to check use of black money for financing terror activities. Financial intermediaries like fullfledged money changer, money transfer service providers such as credit card operators have also been brought under the ambit of The Prevention of Money-Laundering Act. Consequently, these intermediaries, as also casinos, will be brought under the reporting regime of the enforcement authorities.

It would also check the misuse of promissory notes by FIIs, who would now be required to furnish all details of their source.

7(d) The preamble to the Act provides that it is an Act to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The legal framework for securitisation in India emerged with the above enactment. Its purpose is to promote the setting up of asset reconstruction/securitisation companies, which are supposed to take over the Non Performing Assets (NPA) accumulated with the banks and public financial institutions. Special powers under the Act have been given to lenders and securitisation/ asset reconstruction companies, to enable them to take over assets of borrowers without first resorting to courts.

As per **Section 2(1)(z)** *"Securitisation"* means, acquisition of financial assets by any securitization company or reconstruction company from an originator whether by raising of funds by such securitization or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial asset of otherwise.

In pother words, Securitisation is a process by which the 'originators' of assets like loans which are illiquid, are able to transfer such assets to a 'special purpose vehicle' ("SPV"), which in turn, issues tradable liquid securities to investors.

Benefits of Securitisation

The following are the primary benefits of securitization :

(i) The securitized assets go off the balance sheet of the originator and so the asset-base is pruned down to that extent and thereby reducing the regulatory capital requirements to support the assets;

(ii) The asset portfolio is liquidated, releasing cash, which in turn reduces the need for demand and time liabilities that are subject to statutory reserves.

7(e) **Distinction between a mandatory provision and a directory provision**

Where the enactment or provision prescribes that the contemplated action be taken *without any option or discretion*, then such statute or provision or enactment will be called mandatory. Where, the acting authority is vested *with discretion, choice or judgment*, the statute or provision will be called directory.

In deciding whether the statute is directory or mandatory, the question is whether there is anything that makes it the duty of the person on whom the power is conferred to exercise that power. If it is so then the Statute is a mandatory one; otherwise it is directory.

In ***Arante Manufacturing Corporation vs. Bright Bills Private Ltd. (1967)*** and ***Shelagram Jhaigharia vs. National Co. Ltd. 1965,*** 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. If the company in the general meeting disapproves the appointment it shall become invalid form the date of the general meeting.

Thus, in the light of above desicions, sestion 294 (2) which uses the word "shall" is a mandatory provision.