Solved SCANNEY Appendix

CS Executive Programme Module - I (New Syllabus)

(Solution of December - 2014)

Paper - 1: Company Law

Chapter - 1: Introduction

2014 - Dec [1] (a)

DOCTRINE OF LIFTING OF OR PIERCING THE CORPORATE VEIL

The separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will break through the corporate shell and apply the principle/doctrine of what is called as "lifting of or piercing the corporate veil". The Court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company.

The corporate veil is lifted when in defence proceedings, such as for the evasion of tax, an entity relies on its corporate personality as a shield to cover its wrong doings. [BSN (UK) Ltd. v. Janardan Mohandas Rajan Pillai [1996] 86 Com Cases 371 (Bom).] However, the shareholders cannot ask for the lifting of the veil for their purposes. This was held in Premlata Bhatia v. Union of India (2004) 58 CL 217 (Delhi) wherein the premises of a shop were allotted on a licence to the individual licencee. She set up a wholly owned private company and transferred the premises to that company without Government consent. She could not remove the illegality by saying that she and her company were virtually the same person.

2014 - Dec [2A] (Or) (i)

An incorporated company never dies except when it is wound up as per law. A company, being a separate legal person is unaffected by death or departure of any member and remains the same entity, despite total change in the membership. A company's life is determined by the terms of its Memorandum of Association. It may be perpetual or it may continue for a specified time to carry on a task or object as laid down in the Memorandum of Association. Perpetual succession, therefore, means that the membership of a company may keep changing from time to time, but that does not affect its continuity.

The membership of an incorporated company may change either because one shareholder has transferred his shares to another or his shares devolve on his legal representatives on his death or he ceases to be a member under some other provisions of the Companies Act. Thus, perpetual succession denotes the ability of a company to maintain its existence by the constant succession of new individuals who step into the shoes of those who cease to be members of the company. Professor L.C.B. Gower rightly mentions, "Members may come and go, but the company can go on forever. During the war all the members of one private company, while in general meeting, were killed by a bomb, but the company survived - not even a hydrogen bomb could have destroyed it".

Chapter - 3: Promotion and Incorporation of Companies 2014 - Dec [3] (a)

It is clear from the foregoing that the word "promoter" is used in common parlance to denote any individual, corporate, syndicate, association or partnership which has taken all the necessary steps to create and mould a company and set it going. The promoter originates the scheme for the formation of a company; gets together the subscribers to the memorandum, gets the Memorandum and Articles prepared, executed and registered, finds the bankers, brokers and legal advisers, finds the first directors, settles the terms of preliminary contracts with vendors and agreement with underwriters and makes arrangement for preparation, advertisement and circulation of the prospectus and placement of the capital. But a person who merely acts in a professional capacity on behalf of the promoter, such as a solicitor who draws up an agreement or articles, an accountant or valuer who prepares figures or valuation on behalf of a promoter and who is paid for the same, is not a promoter. In the given case, C is not a promoter of the company, because acting as a professional capacity, shall not be deemed as a promoter.

Chapter - 4: Memorandum of Association and Articles of Association 2014 - Dec [1] (b)

In the case of a company, whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires. The word 'ultra' means beyond and the word 'vires' means the powers. As a result, an act which is ultra vires is void and does not bind the company. Neither the company nor the other contracting party can sue on it. Also, as stated earlier, the company cannot make it valid, even if every member assents to it.

The general rule is that an act which is ultra vires the company is incapable of ratification. An act which is intra vires in the company may be ratified by the company in proper form [Rajendra Nath Dutta v. Shilendra Nath Mukherjee, (1982) 52 Comp. Cas. 293 (Cal.)].

The rule is meant to protect shareholders and the creditors of the company. But if the act is ultra vires (beyond the powers) the directors only, the shareholders can ratify it or if it is ultra vires the articles of association, the company can alter its articles in the proper way. The doctrine of ultra vires was first enunciated by the House of Lords in the classic case, Ashbury Railway Carriage and Iron Co. Ltd. v Riche, (1878) L.R.7 H.L.653.

An ultra vires contract is null and void as that of contract with a minor [Steel Equipment & Construction Co. (P) Ltd. Re (1968)38 Com. Cases 82, (1967) 1 Comp LJ 172 (Cal)]. A shareholder can get back the money paid by him to the company under an ultra vires allotment of shares. A transferee of shares from him would not have been so allowed. [Margarate Linz v. Electric Wire Co. of Salestine Ltd. (1948) 18 Com. Cases 201, 205: AIR 1949 PC 51].

The members can get an injunction to restrain the company wherein ultra vires act has been or is about to be undertaken. In *Jehangir R. Modi v Shamji Ladha, [(1866-67) 4 Bom. HCR (1855)*], the Bombay High Court Held: "A shareholder can maintain an action against the directors to compel them to restore to the company the funds of the company that have been employed in transactions that they have no authority to enter into, without making the company a party to the suit".

2014 - Dec [3] (b)

Section 4 of Companies Act, 2013 provides that no company shall be registered by a name which, in the opinion of the Central Government, is undesirable. A name which is identical with or too nearly resembles, the name by which a company in existence has been previously registered, will be deemed to be undesirable. [Lords Insullations India Pvt. Ltd. v. Regional Director, DCA, Chennai & Another (2004) 122 comp. Cas. 892 (Mad.)] However, merely that few words are common may not render the name too identical and thus undesirable. [Society of Moto Manufacturers & Traders Limited v. Moto Manufacturers & Traders Mutual Assurance Limited [1925] 1 Ch. 675].

The Registrar must make preliminary enquiries to ensure that the name allowed by him is not misleading or intended to deceive with reference to its Objects Clause [Methodist Church v. Union of India, (1985) 57 Com. Cas.443 (Bombay)]. The Registrar is not, however, required to carry out any elaborate investigation at the time of registration of the company. Unless the purpose of the company appears to be unlawful ex-facie or is transparently illegal or prohibited by any statute, it cannot be regarded as unlawful association [T.V. Krishna v. Andhra Prabha (P) Ltd., (1960) 30 Comp. Cas. 437 (AP)].

Chapter - 6: Concept of Capital and Financing of Companies 2014 - Dec [1] (c)

	Reserve Capital	Capital Reserve
1.	It is that part of uncalled capital which the company cannot demand except company being wound up.	It is created by the accumulation of profits out of capital profit or earning.
2.	Creation of reserve capital is not mandatory.	It is mandatory and compulsory to create capital reserve in case of profit.
3.		Capital reserve is disclosed under the head Reserve and Surplus on the liabilities side of balance sheet.
4.	Reserve capital cannot be used to write-off capital losses.	Capital reserve can be used to write-off capital losses or for the issue of bonus shares.

2014 - Dec [3A] (Or) (iii)

Sweat equity shares: Sweat equity shares means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available right in the nature of intellectual property rights or value additions by whatever name called. Section 54 permits issue of such equity shares to employees, directors in recognition of their contribution for providing know-how etc. as aforesaid.

Notwithstanding anything contained in **Section 53 of Companies Act, 2013,** a company can issue sweat equity shares, of a class of shares already issued, if the following conditions are satisfied:

- (i) the issue has been authorised by a special resolution passed by the company in the general meeting.
- (ii) the resolution clearly specifies number of shares, current market price consideration, if any and class or classes of directors or employees to whom such equity shares are to be issued.
- (iii) as on the date of issue, at least one year should have elapsed from the date on which the company was entitled to commence business.
- (iv) a company whose shares are listed on a recognized stock exchange issuing sweat equity shares should comply with the regulations made in this behalf by SEBI.
- (v) a company whose shares are not so listed should issue sweat equity shares in compliance with the rules made in this behalf.

Chapter - 8: Private Placement and Prospectus 2014 - Dec [2A] (Or) (iv)

In case an allotment has been made without delivering to the Registrar of Companies, a copy of the prospectus along with other specified documents either before or on the date of its issue. The company shall be punishable with fine which shall not be less than $\stackrel{?}{\sim} 50,000$ but which may extend to $\stackrel{?}{\sim} 3$ lakhs and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to $\stackrel{?}{\sim} 3$ lakhs, or with both.

2014 - Dec [3A] (Or) (iv) Red-Herring Prospectus

"Red Herring Prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Section 32 of the Act deals with Red Herring Prospectus. It provides that:

- 1. As per this section, a company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.
- 2. A company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.
- 3. A red herring prospectus shall carry the same obligations as are applicable to a prospectus. Any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.
- 4. Upon the closing of the offer of securities, the prospectus stating therein the total capital raised, whether by way of debt or share capital and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Red herring prospectus is issued during book building process. Red herring prospectus contains either the floor price of securities offered or a price band along with the range within which the Bids can move. The applicants bid for the shares quoting the price and the quantity that they would like to bid at. SEBI (ICDR) Regulations prescribe certain disclosures to be made in the red-herring prospectus.

Chapter - 10: Creation and Registration of Charges 2014 - Dec [3] (c)

As per the Madras High Court decision in *T.R. Thyagarajan v. Official Liquidator* (1960) 30 Comp. Cas 481, if a company acquires a property, subject to a charge and fails to deliver particulars of the charge to the Registrar, the validity of the charge is not affected. A charge by way of hypothecation of book debts requires registration. A charge on future debts will be void if it is not registered. [*Independent Automatic Sales Ltd. v. Knowles & Foster* (1962) 32 Comp Cas 1090 (C. D.)]. The action of the director is not valid because a charge by way of hypothecation of book debt require registration.

Chapter - 11: Allotment of Securities and Issue of Certificates 2014 - Dec [4] (b)

Consequences of irregular allotment depend upon the nature of irregularity involved. These may be noted as follows:

- 1. Failure to deliver a copy of the prospectus to the Registrar before its issue: In case an allotment has been made without delivering to the Registrar of Companies, a copy of the prospectus along with other specified documents either before or on the date of its issue, the company and every person who is knowingly a party to the issue of the prospectus shall be punishable with fine which may extend to ₹ 50,000. The allotment, however, shall remain valid.
- 2. Non-compliance with provisions of Section 39:

In the event of non-compliance with the provisions of Section 39 (viz allotment without raising minimum subscription or without either collecting application money or collecting less than 5 percent as application money).

Any director who has knowledge of the fact of the irregular allotment of shares shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby. Proceedings to recover any such loss, damages or costs cannot be commenced after the expiration of 2 years from the date of allotment.

Chapter - 13: Transfer and Transmission of Securities 2014 - Dec [2] (c)

S.No.	Transfer of shares	Transmission of shares
1	Transfer of share is effected by a voluntary act of the members.	Where as transmission of shares take place by operation of law, e.g., due to death or insolvence or lunacy of the owner.
2	Transfer of share is the method of transferring the property.	There is no prescribed instrument of transmission.
3	There must be adequate consideration for the transfer of shares.	No consideration is involved.
4	In case of transfer of shares through an instrument of transfer stamp duty is payable on the market value of shares.	

2014 - Dec [3A] (Or) (i) FORGED TRANSFER

It may happen that a forged instrument of transfer is presented to the company for registration. In order to avoid the consequences which will follow a forged transfer, companies normally write to the transferor about the lodgement of the transfer instrument so that he can object if he wishes. The company informs him that if no objection is made by him before a day specified in the notice, it would register the transfer. The consequences of a forged transfer are detailed hereunder:

- (a) A forged transfer is a nullity and, therefore, the original owner of the shares continues to be the shareholder and the company is bound to restore his name on the register of members [People's Ins. Co. v. Wood and Co., 1961 (31) Com Cases 61]. A forged document never has any legal effect. It can never move ownership from one person to another, however, genuine it may appear. Thus, a forged instrument of transfer leaves the ownership of the shares exactly where it always was in the so-called transferor. It follows that if a company registers a forged transfer, the true owner can apply so as to be replaced on the register and his name will be restored. But the company does not incur any liability in damages by putting the name on the register.
- (b) However, if the company issues a share certificate to the transferee and he sells the shares to an innocent purchaser, the company is liable to compensate such a purchaser, if it refuses to register him as a member, or if his name has to be removed on the application of the true owner.
- (c) If the company is put to loss by reason of the forged transfer, as it may have paid damages to an innocent purchaser, it may recover the same independently from the person who lodged the forged transfer.

Chapter - 14: Institution of Directors 2014 - Dec [4] (a)

As in the given case a Public Ltd. Company in which director who has guaranteed the Company's debt retired & in his place new director were appointed in their place & the new director also signed the guarantee bond. The demand of bank from retired director for repayment of debt shall not be valid because new director has signed the bond therefore for default the new director shall be liable.

Chapter - 16: Board and its Powers

2014 - Dec [2A] (Or) (ii)

Section 185: Loans to Directors, etc.

No company shall directly or indirectly advance any loan to any of its directors or to any person in whom director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

But a company may advance loan to managing or whole-time director as part of the conditions of service extended by the company to all its employees or pursuant to any scheme approved by the members by a special resolution or the company provides loans or gives guarantee or securities for the due repayment of any loan in due course of its business.

Rule 10 provides that any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is exempted from the requirements under this section and any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company is exempted from the requirements under this section; provided that such loans are utilised by the subsidiary company for its principle business activities.

Penalty

The contravention of provisions of this section leads to punishment with fine which shall not be less than five lakh rupees but which may extend to twenty five lakh rupees. The director or to whom loan or advance is given or guarantee or security is given or provided shall be imprisonment which may extend to six months or with fine mentioned above or with both.

The Bombay High Court in *Fredie Ardeshir Mehta (Dr.) V. Union of India* held that the company selling one of its flats to one of its directors on receiving half the price in cash and agreeing to accept the balance in instalments does not amount to giving of loan to the Director.

2014 - Dec [6] (b)

Issued for the First Time in any Country - a Unique and Pioneering Effort:

The formulation of Secretarial Standards by the 'Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India (ICSI) is a unique and pioneering step towards standardisation of diverse secretarial practices prevalent in the corporate sector.

Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonize and standardize such practices so as to promote uniformity and consistency.

The Secretarial Standards Board formulates Secretarial Standards taking into consideration the applicable laws, business environment and the best secretarial practices prevalent. Secretarial Standards are developed:

- in a transparent manner;
- after extensive deliberations, analysis, research; and
- after taking views of corporates, regulators and the public at large.

SSB was constituted in the year 2000. The SSB comprises of eminent members of the profession holding responsible positions in well-known companies and as senior members in practice, as well as representatives of regulatory authorities such as the Ministry of Corporate Affairs, the Securities and Exchange Board of India, the Department of Economic Affairs, Reserve Bank of India, Department of Public Enterprises, Chamber of Commerce and the sister professional bodies viz. the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India. The ICSI-CCGRT (Centre for Corporate Governance Research and Training) provides technical support to SSB.

Chapter - 17: Appointment and Remuneration of KMP 2014 - Dec [5] (a)

As in the given case the M.D. of the company has terminated an employee on the charge of various misconducts. The writ petition of employee was allowed by the High Court & the M.D. appealed to the Supreme Court.

The fact of the given case is similar to the decided case of (*Ramaswami v Madras Times Printing & Publishing Company*). In which it was held that the M.D. has power to vary the duties of employees. It means that he has no right to terminate an employee. So, we can say that M.D. can't have right to remove employees without permission of B.O.D.

2014 - Dec [6] (a)

Remuneration to Directors in other Capacity [Section 197(4)]

The remuneration payable to the directors including managing or whole-time director or manager shall be inclusive of the remuneration payable for the services rendered by him in any other capacity except the following:

- (a) the services rendered are of a professional nature; and
- (b) in the opinion of the Nomination and Remuneration Committee (if applicable) or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Sitting Fees to Directors for Attending the Meetings [Section 197(5)]

The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees 1 lakh per meeting of the Board or committee thereof. The Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

Monthly Remuneration to Director or Manager

Permissible forms of Remuneration

A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other. [Section 197 (6)]

Independent directors are not entitled to stock options

An independent director shall not be entitled to any stock option and may receive remuneration by way of fees, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. [Section 197 (7)]

Commission or remuneration from holding or subsidiary company

Any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report. [Section 197 (14)]

Remuneration Drawn in Excess of Prescribed Limit

If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company. [Section 197(9)]

The company shall not waive the recovery of any sum refundable to it under sub-section 9 mentioned above, unless permitted by the Central Government. [Section 197 (10)]

Chapter - 18: General Meetings 2014 - Dec [1] (d)

If the minutes are maintained in the loose leaf form provided all other procedural requirements are complied with and all possible safeguards against manipulation or interpolation of the minutes are ensured. The loose leaves can be got bound at reasonable interval say, six months. Entering the minutes, in the bound minutes book by a chemical process, which does not amount to attachment to any book by pasting or otherwise is permissible provided on the mechanical impression of the minutes, the original signatures of the Chairman are given on each page.

Section 118 of Companies Act, 2013 does not provide that minutes should be written up to the last page of minutes book. Thus, where after recording the minutes of a condolence meeting of the Board on the death of one of the directors, a new minute book was started, it was held that, in the absence of allegation that the minutes were not written faithfully or in time, it could not be contended that minutes book could not be relied upon to decide allegation of oppression levelled against director [Mahrani Yogeshwari Kumari v. Lake Shore Place Hotel [1996] 21 CLA 107 (Raj.)].

2014 - Dec [4] (c), (d)

- (c) As in the given case Pioneers Ltd. convened a board meeting on 1st Sep. 2013 & in board meeting date of next AGM was discussed but no decision was taken even though the Company Secretary issued the notice for AGM without any specific authorisation from BOD. If the CS issues notice without express approval of the director then such notice will not be considered as act of director but the notice shall be valid if it is ratified by BOD before the date of meeting.
- (d) The expression "not less than twenty-one days" has been construed as twenty-one clear days, meaning thereby that the date of posting and the date of the meeting are excluded when calculating the period of twenty-one days. Intervening holidays are counted as period of notice. Further, if the notice is to be sent by post, another 48 hours are to be added. If a meeting is to be held on the 25th of a month, notice is to be dated and posted not later than 23 days before that date i.e. 2nd of the month. In the given case, the notice given by company was not valid.

Chapter - 20: Deposits 2014 - Dec [5] (b)

Power of the Consumer Protection to order repayment of deposit:

In Neela Raje v. Amogh Industries [RP No. 409 of the 1992 dated 26.8.93 (1993) 840 (1993) 12 CLA 90 (NCDRC)], the National Consumer Disputes Redressal Commission was faced with a query as to whether a complaint lodged in regard to the failure to pay interest on repayment of the principal amount on the maturity of a deposit by a company could entertained by a consumer forum. The commission pointed out that after the Amendment Act, 1993, a consumer forum can direct payment of amounts due to a depositor under the provisions of Section 14 of the Consumer Protection Act, 1986. An order directing payment of the outstanding amount to the depositor can now be made under the provisions of the said Section 14.

Chapter - 21: Accounts and Audit 2014 - Dec [6] (c) Notes on Accounts

one of the main objectives of the Annual Accounts of a company is to communicate effectively its strengths and weaknesses. The bare figures encompassing the amounts are not sufficient by themselves to depict and explain the true and fair view of the state of affairs of a company. It has, therefore, become necessary to explain and communicate some of the vital information through 'Notes on Accounts'. By and large the notes on accounts are explanatory. They elucidate the figures in the accounts and explain their significance. Sometimes, these notes are clarificatory to meet the requirements of law. Whether a particular note is explanatory or clarificatory will depend on the facts in each case and the manner in which it is stated. Notes on accounts form an integral part of the accounts of a company and contain very interesting and vital information.

Contents of notes on accounts

The notes on accounts are intended to clarify and elucidate the financial position of a company as disclosed in its balance sheet and profit and loss account. Generally the notes on accounts dwell on the following matters:

- 1. Basis of accounting:
- 2. Significant accounting policies;
- 3. Material changes, if any, in the method of accounting;
- 4. The effect of material changes in the method of accounting on any item in the financial statement in physical terms to the extent ascertainable. Where such amount is not ascertainable, either wholly or in part, the fact should be stated;
- 5. Method of valuation of fixed assets:
- 6. Method of valuation of trade and other investments:
- 7. Method of providing depreciation;
- 8. Valuation of inventories;
- 9. Treatment of any income and expenditure on cash basis as against accrual basis;
- 10. Expenditure in foreign currency account;
- 11. Foreign exchange conversion;
- 12. Any disputed liabilities and claims against the company;
- 13. Any major litigation pending by or against the company;
- 14. Method of providing for retirement and terminal benefits;
- 15. Remuneration paid to managerial personnel and their calculation thereof.

Chapter - 22: Divisible Profits and Dividends 2014 - Dec [2] (d)

Final dividend: Dividend is said to be a final dividend if it is declared at the annual general meeting of the company. Final dividend once declared becomes a debt enforceable against the company. Final Dividend can be declared only if it is recommended by the Board of Directors of the Company. In accordance with **Section 134(3)(k) of Companies Act, 2013** Board of Directors must state in the Directors' Report the amount of dividend, if any, which it recommends to be paid.

Interim dividend: Dividend is said to be an interim dividend, if it is declared by the Board of Directors between two annual general meetings of the company. However, all the provisions relating to the payment of dividend shall be applicable on the interim dividend also.

2014 - Dec [3] (d)

Declaration of interim dividend

Section 123(3) of the Companies Act, 2013 provides that the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the Profit and Loss Account as well as profit of the financial year in which the interim

dividend is sought to be declared. When the company has incurred any loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding the three financial years.

Chapter - 23: Board's Report and Disclosures 2014 - Dec [6] (d)

Corporate Governance Report

Corporate governance aims to improve the company's image, efficiency, effectiveness and social responsibility. It encompasses in itself a range of corporate controls and accountability mechanisms designed to meet the aims of corporate stockholders. It deals with issues regarding transparency accounting integrity, composition of the board of directors, the role of non-executive directors and their accountability to shareholders, etc. Clause 49 (VI) of the listing agreement relates to reporting on corporate governance. It provides that there shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted. The suggested list of items to be included in this report is given in Annexure- I C and list of non-mandatory requirements is given in Annexure- I D.

Gist of Annexure I C

- 1. A brief statement on company's philosophy on code of governance.
- 2. Details relating to Board of Directors.
- 3. Details relating to Audit Committee, Shareholders Committee and other committees.
- 4. Details with respect to General Body meetings: Location and time, where last three AGMs held, special resolutions passed in the previous 3 AGMs etc.
- 5. Detailed disclosures with respect to materially significant related party transactions, non-compliance by the company etc.
- 6. Details of Means of communication adopted by the company
- 7. General Shareholder information relating to Date of Book closure, Stock Code, Dividend Payment Date, Market Price Data, Plant Locations etc.

Gist of Annexure I D (Non- Mandatory Requirements)

- 1. Tenure of Independent Directors
- 2. Constitution of remuneration committee
- 3. Training of Board Members

The company shall obtain a certificate from, either the auditors or practicing company secretaries, regarding compliance of conditions of corporate governance as in clause 49 of the listing agreement and annex the certificate with the directors' report, which is sent annually to all the shareholders of the company. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the company. The reference of inclusion of report on corporate governance in the annual report should be made in the Board's Report and, as a good corporate practice, information relating to any non-compliance of the requirements of Clause 49 of the listing agreement should be incorporated in the Board's Report.

Chapter - 26: Majority Rule and Minority Rights **2014 - Dec [2]** (b)

Oppression

The first remedy in the hands of an oppressed minority is to move the Company Law Board. Companies Act provides that any member of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member(s) (including any one or more of themselves) may make an application to the Company Law Board by way of petition for relief. Following requirements must be satisfied for seeking a relief under Companies Act:

- That the affairs of the company are being conducted: (a) in a manner prejudicial to public interest; or(b)oppressive to any members.
- (ii) That the fact justified the compulsory winding up order on the ground that it is just and equitable that the company should be wound up.
- (iii) That to wind up the company would unfairly prejudice the petitioners [Ramji Lal Baiswala v. Britain Cable Ltd., (1964) 14 Raj. 135].

On being satisfied about the above requirements, the Company Law Board may make the necessary orders for ending the matters complained of. The first requirement relates to public interest or oppression. First we analyse and discover the precise connotation of the word "oppression" with the help of judicial decisions.

Mismanagement

Section 398 (Section 241 and 242 of Companies Act, 2013)

For a petition under this section to succeed, it must be established that the affairs of the company are being conducted in a manner prejudicial to the interest of the company or public interest, or that, by reason of any change in the management or control of the company, it is likely that the affairs of the company will be conducted in that manner. If the court is so convinced, it may, with a view to bringing to an end or preventing the matter complained of or apprehended, make such order as it thinks fit.

Yet to be notified.

Chapter - 29: Limited Liability Partnerships 2014 - Dec [2A] (Or) (iii) LLP FOR THE PROFESSIONALS

LLPs are eminently suited to the professionals like Company Secretaries and others. They will get the benefit of limited liability and insulate them from third party claims against professional negligence or deficiency. A cross section of the professionals may come together under the banner of LLP to carry on the professional work in their respective field of specialisation, with the respective statutes according sanction for such a dispensation. Such an arrangement will bring the professionals closer and this will benefit the corporate and other clients, as they may be able to get solutions to their problems under one roof. This will also create a strong organisation of professionals and acts as a bulwark against keen competition expected to happen from the professionals abroad, with the opening of legal field under the WTO dispensation.

Chapter - 31: Offences, Penalties and their Compounding 2014 - Dec [3A] (Or) (ii)

Officer in default

As per Section 2(60) "officer who is in default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:

- (i) whole-time director;
- (ii) key managerial personnel;
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits or knowingly fails to take active steps to prevent, any default;
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same or where such contravention had taken place with his consent or connivance:
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.

Chapter - 32: Winding up - Concept and Modes 2014 - Dec [2] (a)

The term winding up and dissolution are sometimes erroneously used to mean the same thing. But there is a subtle difference between the two terms.

- (i) Winding up is a process and dissolution is its and result. In other words, winding up proceeds dissolution. This means that winding up is the prior stage and dissolution, the subsequent one.
- (ii) On the commencement of winding up, the Corporate Status and Power of the Company continue. It is on dissolution that the name of the company is struck off the register of companies and it ceases to exist.
- (iii) Creditors can prove their debts in the winding up but not on the dissolution of the company.
- (iv) The liquidator appointed by the company or the Court/Tribunal carries out the winding up proceedings but the order for dissolution can be passed by the Court/Tribunal only.

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