Test Series: February, 2016

MOCK TEST PAPER – 1

FINAL COURSE: GROUP – I

PAPER – 4 : CORPORATE AND ALLIED LAWS

Question No.1 is compulsory.
*Attempt any **five** questions from the remaining **six** Questions.*

Time Allowed – 3 Hours Maximum Marks – 100

1 (a) According to section 123(3), 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 and out of profits of the financial year in which such interim dividend is sought to be declared.

However, in case the company has incurred 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 three financial years.

The Board of directors may declare interim dividend and the amount of dividend including interim dividend, shall be deposited in a separate bank account within five days from the date of declaration of such dividend.

Transfer to reserves: A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is to be decided at the discretion of the company.

Taking into account the above provisions, the sub-sections as asked can be answered as under:

(i) The declaration of Interim dividend at the rate of 25% is violative of the provisions of the Act and therefore, invalid for the reasons that the rate of dividend so declared is in excess of the average profits of the preceding three years, which is 20%. The interim dividend proposed to be declared should not be more than 20%.

(ii) Regarding transfer of profits to general reserve, since it is at the discretion of the company to transfer certain profits to reserves or not, it is not mandatory for the company to transfer any amount to profits to reserve. Therefore, Board's decision not to transfer of profits to reserves is quite valid.

(b) In accordance with the provisions of the Companies Act, 2013, as contained under section 137(1):

(1) Where the financial statements are not adopted at Annual General Meeting or adjourned Annual General Meeting, such un-adopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of Annual General Meeting.

(2) The Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned Annual General Meeting for that purpose.

(3) If the financial statements are adopted in the Adjourned Annual General Meeting, then they shall be filed with the Registrar within 30 days of the date of such adjourned Annual General Meeting with such fees or such additional fees as may be prescribed within the time specified under section 403.

AGM not held: [Section 137(2)]

Where the Annual General Meeting of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the Annual General Meeting should have been held and in such manner, with such fees or additional fees as may be prescribed within the time specified, under section 403.

Therefore:

1. In the first case the company has to file the unaudited financial statements with reasons thereof in accordance with the above provisions with the registrar.

2. Even in the second case, if the AGM could not be held for the reasons that the audited accounts were not ready, is no excuse. The financial statements will have to be filed with the registrar, duly signed by the appropriate authorities of the company, and reasons thereof are to be given as stated above.

(c) Price manipulation in the shares of X Ltd. can be considered as fraudulent and unfair trade practices relating to securities market. In this case SEBI may exercise the following powers under section 11(4) of securities and Exchange Board of India Act, 1992.

(i) Suspend the trading of any security (in this case the securities of X Ltd.) in a recognized stock exchange.

(ii) Restrain persons (in this case X Ltd.) from accessing the securities market. It can also prohibit any person associated with securities market (i.e. brokers who have indulged in price manipulation) to buy, sell or deal in securities market.

SEBI may issue the above orders for reasons to be recorded in writing. SEBI shall, either before or after passing such orders give an opportunity of hearing to company and brokers concerned [proviso 2 to Section 11(4)] SEBI may also appoint an adjudicating officer who may levy penalty under section 15 HA after holding an enquiry in the prescribed manner. According to section 15HA if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be levied to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

(d) Share Transactions by Member of Stock Exchange: Members of stock exchange normally carry out transactions on behalf of investors and hence principal-agent relationship between them exists. A member can enter into transactions as principal with another member of the exchange only. If a member of stock exchange desires to enter into contract as principal with a non-member then he has to get written consent from such person to act as principal. The Contract note should indicate that he is acting as principal [Section 15 of the Securities Contracts (Regulation) Act, 1956].

Where the member has obtained the consent of such person otherwise than in writing he shall ensure written confirmation by such person or such consent within three days from the date of such contract.

Spot delivery contracts are not within the purview of Section 15 of the said Act (Section 18).

Thus, M/s Ganesham &sons must bear in mind the above restrictions while entering into any transaction as principal with a non-member.

2 (a) Section 161(4) of the Companies Act, 2013 provides that in the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

In view of the above provisions, in the given case, the appointment of Mr. C in place of the deceased director Mr. P was in order. In normal course, Mr. C could have held his office as director up to the date to which Mr. P would have held the same.

However, Mr. C expired on 15th May, 2015 and again a vacancy has arisen in the office of director owing to death of Mr. C who was appointed by the board to fill up the casual vacancy resulting from P's demise. Vacancy arising on the Board due to vacation of office by the director appointed to fill a casual vacancy in the first place,

does not create another casual vacancy as section 161 (4) clearly mentions that such vacancy is created by the vacation of office by any director appointed by the company in general meeting. Hence, the Board cannot fill in the vacancy arising from the death of Mr. C.

The Board may however appoint Mrs. C as an additional director under section 161 (1) of the Companies Act, 2013 provided the articles of association authorises the board to do so, in which case Mrs. C will hold the office up to the date of the next Annual General Meeting or the last date on which the Annual General Meeting should have been held, whichever is earlier.

(b) (i) Restriction on further capital issues- As per the SEBI(ICDR) Regulation 2009 under the given regulation 19, no issuer shall make any further issue of specified securities in any manner whether by way of public issue, rights issue, preferential issue, qualified institutions placement, issue of bonus shares or otherwise:

(a) in case of a fast track issue, during the period between the date of registering the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies or filing the letter of offer with the designated stock exchange and the listing of the specified securities offered through the offer document or refund of application moneys; or

(b) in case of other issues, during the period between the date of filing the draft offer document with the Board and the listing of the specified securities offered through the offer document or refund of application moneys; unless full disclosures regarding the total number of specified securities and amount proposed to be raised from such further issue are made in such draft offer document or offer document, as the case may be.

(ii) Registration of prospectus (Section 389 of the Companies Act, 2013): According to this section, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

According to the *Companies (Registration of Foreign Companies) Rules, 2014,* the following documents shall be annexed to the prospectus, namely:

(a) any consent to the issue of the prospectus required from any person as an expert;

(b) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;

(c) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years;

(d) a copy of underwriting agreement; and

(e) a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

3 (a) Merger and Scheme of Valuation:

(i) The contention of the shareholders in this case shall not be tenable. The court is not to disturb a scheme unless the person who challenges the valuation satisfies the court that the valuation arrived at was grossly unfair. Valuation in this case was approved by the shareholders and also okayed by the lending institution(s) which are usually well-informed and scrutinize the scheme with expert's eye and which are also presumed to act bonafide. In the similar case of *Tata Oil Mills Ltd. Re (1994)*, the court held that the presumption of fairness was writ large on the face of the Scheme. The Court did not attach importance to the fact that certain leasehold assets and properties held under license were excluded from valuation. Such assets, the court said, were neither transferable nor heritable. They are in the nature of a personal privilege. The Supreme Court affirmed this decision in *Hindustan Lever Employees Union v, Hindustan Lever Ltd., (1994)* and accepted the exchange ratio proposed. The Supreme Court found no objection to the valuation being done by one of the directors of TOMCO (DJA Co. in this case). His report did not show any prejudice and was also affirmed by the independent valuers. Supreme Court also enumerated all the possible methods of valuation such as, market price, book value and yield basis and pointed out that a combination of all or some of the methods, may have to be adopted in circumstances of a particular case. Thus based on the above explanation and the decisions given by the Supreme Court, it can be concluded that the contention of the shareholders that the exclusion of certain leasehold assets in the valuation has made the scheme unfair, shall not be tenable.

(ii) The court would take into account the following factors in determining the final share exchange ratio:

1. The stock exchange prices of the shares of the two companies before the

commencement of negotiations or the announcement of the bid.

2. The dividends presently paid on the shares of the two companies.
3. The relative growth prospects of the two companies.
4. The cover for the present dividends of the two companies.
5. The relative gearing of the shares of the two companies.
6. The values of the net assets of the two companies.
7. The voting strength in the merged enterprise of the shareholders of the two companies.
8. The past history of the prices of the shares of the companies.

(b) (i) Powers of RBI for inspection:The Reserve Bank may, at any time, cause an inspection to be made by any officer of the Reserve Bank specially authorized in writing by the Reserve Bank in this behalf, of the business of any authorized person as may appear to it to be necessary or expedient for the purpose of:

(a) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;

(b) obtaining any information or particulars which such authorized person has failed to furnish on being called upon to do so;

(c) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

(ii) Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to a managerial personnel is linked to the effective capital of the company. Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding ₹ 60 Lakhs in the year in case the effective capital of the company is between ₹ 100 crores to 250 crores. The limit will be doubled if approved by the members by special resolution and further if the appointment is for a part of the financial year the remuneration will be pro-rated.

From the foregoing provisions contained in schedule V to the Companies Act, 2013 the payment of ₹ 50 Lacs in the year as remuneration to Mr. X is valid in case he accepts it, as under the said schedule he is entitled to a remuneration of ₹ 60 Lakhs in the year and his terms of appointment provide for payment of the remuneration as per schedule V.

4 (a) (i) Commercial Insolvency of Wonder Ltd.: In this case three facts are given i.e.:

1. Wonder Limited went for a public issue and subsequently it was required to refund the amount received on application.
2. As a result, the company has no prospects of doing any business.
3. There was a complete dead lock among the directors.

These three circumstances may be construed as indicators of commercial insolvency of the company.

Section 433 (e) read together with Section 434 of the Companies Act, 1956, provides that a Court may order for winding up of a company if it is unable to pay its debts or deemed to be unable to pay its debts and it is proved to the satisfaction of the Court after taking into account all the liabilities including the contingent and prospective liabilities of the company. Moreover, Section 439 gives powers to the creditors for filing an application for its petition for winding up. There are no chances for the sustainment of shareholder's objection [*Deccan Farms & Distilleries Ltd. vs. Velabai Laxmidas Bhaiji (1979)*]. The Court has got wide discretionary powers regarding winding up. It may or may not dismiss the petition of creditors for winding up. Even if a winding up petition is a proper remedy against a company which is unable to pay its debts, the Court may in its discretion refuse to put an end to the life of the company [*Jugalkishore Banarsidas vs. South India Saw Mills P. Ltd. (1975)*].

(ii) The Provisions of the Companies Act, 1956, which will apply in this case, are:

(a) A company may be wound up by the Court, if the company is unable to pay its debts. [Section 433(e)]

(b) A company shall be deemed to be unable to pay its debts, if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company. [Section 434(1)(c)].

(c) An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, by any creditor or creditors, including any Contingent or prospective creditor or creditors. [Section 439(1)(b)]

(b) (i) In terms of the proviso to section 173(3) of the Companies Act, 2013 a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. No exception is made for any class or classes of companies.

Further, under section 173(3) a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address

registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. If we examine the above provision, it is clear that the notice shall be sent by hand delivery or by post or by electronic means.

Hence, the sending of notice by e mail is an ordinary mode of sending notice of a board meeting under the Companies Act, 2013.

Therefore, in the given case the shorter notice is legally permitted with the only condition being the presence of the quorum and at least one independent director. The provision of the Articles in this regard is not relevant as the position is amply clear in the Act itself.

(ii) As per section 2(b) of the Competition Act, 2002, an agreement includes any arrangement or understanding or action in concert:-

(1) whether or not, such arrangement, understanding or action is formal or in writing; or

(2) whether or not, such arrangement, or understanding or action is intended to be enforceable by legal proceedings.

In the given case the understanding reached among the cotton producers not to sell below a certain price shall amount to an agreement as defined under section 2(b) notwithstanding the fact that though the arrangement is in writing but not intended to be enforced by legal proceeding.

5 (a) (i) Disqualification of auditor: According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Rakesh, Chartered Accountants, did not hold any such security. But Mrs. K, his wife held equity shares of EF Limited of face value Rs. 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Rakesh & Company can continue to function as auditors of the Company even after 15th October 2015 i.e. after the investment made by his wife in the equity shares of EF Limited.

(ii) Removal of first auditor: Section 140(1) stipulates that any auditor appointed under section 139 may be removed from office before the expiry of his term by passing special resolution in general meeting, after obtaining the previous approval of the Central Government in that behalf.

Provided that before taking any action under subsection (1) of Section 140, the auditor concerned shall be given a reasonable opportunity of being heard.

The first auditors appointed by Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence the removal of the first auditor appointed by the Board without seeking approval of the Central Government is invalid. The company contravened the provision of the Act.

(b) (i) Composition of SFIO [Section 211 (2)]: The SFIO shall be:

(a) Headed by a Director, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs, and

(b) Consist of number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in, for the efficient discharge of its functions under this Act —

(1) banking;

(2) corporate affairs;

(3) taxation;

(4) forensic audit;

(5) capital market;

(6) information technology;

(7) law; or

(8) such other fields as may be prescribed.

(ii) Prohibition of loans as per the Insurance Laws (Amendment) Act, 2015 of the Insurance Act, 1938(Section 29)

No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life insurance policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner. This shall not apply to such loans made by an insurer to a banking company, as may be specified

by the Authority. Further this shall not be applicable from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company if the previous approval of the Authority is obtained for such loan or advance. The provisions of section 185 of the Companies Act, 2013 shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy.

6 (a) (i) According to section 581P of the Companies Act, 1956 the members who sign the memorandum and the articles may designate (not less than five) as first directors and who shall govern the affairs of the company until the directors are appointed at the Annual General Meeting.

(1) According to section 581-O every producer company shall have at least five and not more than fifteen directors.

(2) The period of office of director shall be not less than one year and not exceeding 5 years as may be specified in the articles.

(3) The election of directors shall be conducted within 90 days from the date of registration of the producer company. In the case of Inter-state co-operative society the election shall be held within a period of 365 days.

(4) The directors are normally elected and appointed by the members in the Annual General Meeting. The Board may also co-opt one or more expert directors as an additional director. Such directors cannot exceed 1/5th of the total number of directors.

(5) The expert directors shall not have the right to vote in the election of Chairman but shall be eligible to be elected as Chairman if it is provided by the articles.

Thus Mr. Z can be appointed as expert director but he will not have any voting right in the election of chairman of the Board of directors. His tenure of office can be between one to five years.

(ii) (I) Section 397 of the Companies Act, 1956 deals with the remedy in a situation when the affairs of the company are being conducted in a manner oppressive to a shareholder or shareholders. This means that some of the shareholders must be in such a position that they can be oppressed by other shareholders or the management.

In the present case as given in the question, both the Indian Group and the French Group of Indo-French Ltd. are equally strong and none is able to oppress the other. The situation stated in the question is a deadlock but it cannot be termed as oppression. Since it is not a case of winding up

of the company, the relief under the said section 397 is not available to the Indian Group. [*Gnanasambandam v. Tamilnad Transporters (Coimbators) p. Ltd.*] In view of the position discussed, the contention of the Indian Group is not tenable.

(II) The powers of the CLB under the provisions of section 397 of the Companies Act, 1956 are discretionary in character. Apart from the general powers envisaged therein, the CLB under section 402 (b) of the said Act, may order the purchase of the shares of one group by the other group. In the case of *Yashovardhan Saboo Vs. Groz Beckert Saboo Ltd.,* the presiding officer ordered the foreign group to buy out the shares of the minority group at the fair price with deadlock and the matters are not sorted out by any other means, an order for winding up of the company may also be made under the just and equitable clause, [*Kishan Kumar Ahuja Vs. Suresh Kumar Ahuja*]. Thus, if the Indian Group or the French Group fails to buy out the shares of the other group, an order for winding up of the company may be made under the just and equitable clause.

(b) (i) Resolution passed at the meeting of board of directors of DBM Limited held at its registered office situated at …….. on 2nd May, 2014 at ……. A.M.

"RESOLVED that subject to the approval by the shareholders in a general meeting and pursuant to the provisions of of the applicable provisions of the Companies Act, 2013, Mr. Paul be and is hereby appointed as the Managing Director of the Company with effect from 1st June, 2014 for a period of five years on a remuneration approved by the Remuneration Committee as enumerated below:

(1) Salary: Rs. …….. per month

(2) Perquisites, Benefits and Facilities ……..

RESOLVED FURTHER that Mr. Paul, so long as he functions as the Managing Director of the Company shall not be entitled to any sitting fee for attending the meeting of the Board of Directors or any committee thereof and that he shall not be liable to retire by rotation.

RESOLVED FURTHER that the Secretary of the company be and is hereby directed and authorized to file necessary returns with the Registrar of Companies and to do all other necessary things required under the provisions of the Companies Act, 2013."

(ii) "Money laundering" does not mean just siphoning of fund: Money Laundering is a moving of illegally acquired cash through financial systems so that it appears to be legally acquired. Thus, money laundering is not just the siphoning of fund but it is the conversion of money which is illegally obtained.

Prevention of Money Laundering Act, 2002 has been enacted with aim for combating channellising of money into illegal activities.

Significance and Aim of Prevention of Money Laundering Act, 2002: 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.

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. The new law seeks to check use of black money for financing terror activities. Financial intermediaries like full-fledged money changers, money transfer service providers and credit card operators have also been brought under the ambit of the Prevention of Money-Laundering Act. Consequently, these intermediaries, as also casinos, have been brought under the reporting regime of the enforcement authorities. It also checks the misuse of promissory notes by FIIs, who would now be required to furnish all details of their source. The new law would check misuse of "proceeds of crime" be it from sale of banned narcotic substances or breach of the Unlawful Activities (Prevention) Act. The passage of the Prevention of Money Laundering (Amendment), 2009 have enabled India's entry into Financial Action Task Force (FATF), an inter-governmental body that has the mandate to combat money laundering and terrorist financing.

7 (a) Intimation of changes in particulars specified in DIN application: The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for intimation of changes in particulars specified in the DIN application. According to which every individual who has been allotted a DIN under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form DIR-6 in the following manner, namely :-

A. the applicant shall download Form DIR-6 from the portal and fill in the relevant changes, attach copy of the proof of the changed particulars and verification in the Form DIR-7 all of which shall be scanned and submitted electronically;

B. the form shall be digitally signed by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice;

C. the applicant shall submit the Form DIR-6.

(b) According to section 448 of the Companies Act, 2013, if any person makes a statement which is false in any material particulars, knowing it to be false or omits any material facts, knowing it to be material, such person shall be liable under section 447. As per Section 447, any person who is found to be guilty under this section shall be punishable with imprisonment for a term which shall not be less

than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud. Provided that, where the fraud involves public interest, the term of imprisonment shall not be less than 3 years.

Hence, Mr. Atharva, a director of Northway highway Tolls Private Limited shall be punishable with imprisionment and fine prescribed as aforesaid.

(c) Appeal against acquittal: According to section 444 of the Companies Act, 2013, the Central Government may, in any case arising under this Act, direct –

(a) any company prosecutor, or

(b) authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court.

Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

(d) Asset Reconstruction: 'Asset Reconstruction' means acquisition by any securitization company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realization of such financial assistance. (Section 2(b) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.)

Financial Assets

Financial Assets' means debt or receivables and includes:

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(ii) any debt or receivables secured by mortgage of, or charge on, immovable property; or a mortgage, charge, hypothecation or pledge of movable property; or

(iii) any right or interest in the security, whether full or part underlying such debt or receivables; or

(iv) any beneficial interest in property, whether movable or immovable or in such debt, receivables, whether such interest is existing, future accruing, conditional or contingent; or

(v) any financial assistance. [Section 2(1)].

(e) The provisions relating to disclaimer of onerous property will arise during the winding up of the company. The liquidator, may, with the leave of the court disclaim any onerous property within 12 months of the commencement of the winding up. If the existence of any disclaimable property does not come to the knowledge of the liquidator, within one month after the commencement of the winding up, he can

disclaim at any time within 12 months after he has become aware of it. The Court has, however, the power to extend the time.

An onerous property may consist of (a) land of any tenure burdened with onerous covenants (b) shares or stocks in companies (c) any other property which is unsaleable or not readily saleable (d) unprofitable contracts.

The liquidator's right to disclaim is lost if within 28 days or such extended period as may be allowed by the court, of receiving a demand from any interested person to make his decision, he does not give notice that he intends to apply to the court for leave to disclaim [Section 535(4) of the Companies Act, 1956]