

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 5

Total number of printed pages : 4

NOTE : Answer **ALL** Questions.

1. Read the following case and answer the questions given at the end :

Prime Meridian Queen Ltd. (PMQ Ltd.) was engaged in the business of trading and manufacturing. The shares of the company were listed on different stock exchanges across the country.

The role of each director of PMQ Ltd. is listed below :

Manish	Managing Director
Raghav	Promoter and whole-time director
Ravi	Independent director and Chairman of Audit Committee
Raju	Independent director and member of Audit Committee
Ms. Riya	Independent director and member of Audit Committee and CSR Committee

The investigating authority conducted investigation of the quarterly and annual financial results of PMQ Ltd. for the financial year 2014-15. The investigation revealed that the financial results in the quarterly report filed with the stock exchanges contained inflated figures of the company's revenues, profits, security deposits and receivables. The manipulation in the financial results of the company resulted in price rise of the scrip of the company and the promoters pledged their shares to raise substantial funds from financial institutions. It was also found that the company and its directors published / caused to publish false and misleading financial results of the company. To be precise, it was found that the annual financial results for the year 2014-15 reported to the stock exchanges contained inflated figures which were relied upon by investors for making investment decisions. The investigating authority issued a show cause notice as to why enquiry should not be conducted and penal action be taken against the directors and the company, if found guilty.

The directors filed detailed replies to the show cause notice denying all the allegations.

The common thread running through the submissions of the directors was that they were not personally involved in the day-to-day management of the company and the financial results as verified and certified by the Chief Financial Officer and auditors were approved by them. They had no role in the verification and authentication of the financial results since they had already been verified and certified by duly appointed and competent professionals. In respect of Raghav, promoter and whole-time director, it was contended that his expertise was in human resources management and he was involved only in man management, leadership and team building in the company. He was fully engrossed in recruitment of personnel, training and team building. According to Raghav, all business operations, financial matters and verification of accounts were handled by Manish, Managing Director of the company. It was strenuously argued by Raghav that he relied on the concurrence and approval of accounts by the finance division and the Managing Director in good faith. It was also pointed out that the price rise, alleged to be manipulated, was, in fact, dictated by the normal upward movement of the stock market.

In respect of Ms. Riya, independent director and member of Audit Committee and CSR Committee, it was contended that her expertise was in corporate social responsibility and she was appointed by the company due to mandatory provisions of the Companies Act, 2013 and SEBI requirements. It was contended by Ms. Riya that the investigating authority has proceeded from the angle of vicarious liability of the directors whereas in the facts of the case, due regard has to be given to the delegation of powers to various professionals and Ms. Riya deserves to be exonerated.

The Board of directors argued that in a company the role of each director is confined to his/her field of operation and there is no justification for holding a director to be in overall charge and control of the affairs of the company. The role of Raghav was confined to only human resources management and he could not be expected to exercise control over other departments like finance and accounting since he had no expertise in the area and also systems were in place for effective control and management.

Ravi, Raju and Ms. Riya all contended that they were independent directors who did not participate in the day-to-day affairs of the company. They used to attend Board meetings where verified and vetted documents were produced for approval and they approved the same in good faith. It was submitted that even though they were members of the Audit Committee, no irregularity could be pointed out since the professionals working in the company, who had been delegated with the task of preparing, consolidating and verifying the accounts did not raise any alarm bell. As in the case of the whole-time director, Raghav, the other three independent directors mentioned above also submitted that finance was the portfolio of the Managing Director and the accounts were accepted by them in Board meetings since their veracity and accuracy had been tested by the professionals duly appointed for the job.

Finding of the Investigating Agency

As per the provisions of the Companies Act, 2013, Memorandum of Association (MOA), Articles of Association (AOA) and the minutes of the Board meetings, the whole-time director and other directors have a predominant responsibility of the duty of care and this has been abdicated by the directors in this case. A director is statutorily expected to show the diligence and care of a prudent person while verifying the documents placed for approval in Board meetings. With reference to the apparent irregularities/abnormalities noticed in the accounts, the investigating authority pointed out that there were certain basic factors which stood out in the accounts which should have aroused the curiosity of the directors. Failure on the part of the directors to exercise due care in spite of the existence of circumstances which led to the knowledge of irregularities indicates deliberate disregard of those facts and therefore, responsible for the mischief.

On consideration of the facts on record and the submissions made by the directors, it was concluded that the directors have not acted in compliance with the statutory requirements. The director of a company is expected to exercise due care and diligence in the approval of documents brought on the table during Board meetings. It is the responsibility of a director to identify deficiencies, wherever possible, by employing verification and scrutiny expected of a prudent man. Meetings of Board of directors are not rituals where documents are signed at the behest of the Chairman or Managing Director. A director cannot take a stand that he/she has approved the documents totally depending on the integrity and expertise of the Managing Director.

A whole-time director is a director employed to devote the whole of his time and attention in carrying on all the affairs of the company. The role of a whole-time director is very significant and material in running day-to-day affairs of a company. His role and responsibility are equivalent to that of a Managing Director inasmuch as he is expected to spend his whole time in the management of the company. This implies a high level of accountability and knowledge of the overall functioning of the company. He cannot take shelter under the argument that he was in charge of only human resources management, and other aspects like business operations, financial management and preparation of accounts were totally alien to him. As a whole-time director, he was duty bound to examine the accounts with a critical eye as expected from a prudent person and identify irregularities which were prominent in the financials of the company.

The members of the Audit Committee are expected to exercise due oversight of the company's financial reporting process and to ensure that the financial statements are correct, sufficient and credible. It is also expected to conduct a meaningful review with special emphasis on major accounting entries and significant adjustments made in the accounts before putting up the statements for the approval of the Board. The Board of directors of the company has entrusted the Audit Committee with an onerous duty to see that the financial statements are correct and complete in every respect. In this background, the members of the Audit Committee cannot take shelter under the verifications made by the internal auditor and other professionals.

With the changing scenario in the corporate world, the concept of corporate responsibilities is also rapidly changing day-by-day. The director of a company cannot confine himself to lending his name to the company but he has to take responsibility for its day-to-day management as well. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands-on approach in the running of the company and take up responsibility not only for the achievements of the company but also the failings thereto.

Questions —

- (a) "The Board is a primary element in a company and independent directors can contribute significantly to the decision making of the Board." Examine critically in the context of Good Corporate Governance. (10 marks)
- (b) Board evaluation is an essential process in effective discharge of an important function, and therefore, performance evaluation should not be limited to the Board but should also include evaluation of each director and the committees. Discuss. (10 marks)
- (c) What parameters should a company evolve while appointing a woman director in compliance with the provisions of the Companies Act, 2013 ? (10 marks)
- (d) Is the Audit Committee subservient to the Board while discharging its responsibilities envisaged under the Companies Act, 2013 ? How independent should the Audit Committee be ? Discuss. (10 marks)

- (e) "Corporate social responsibility and corporate governance are inextricable in today's perception of the society." Elaborate. (10 marks)
2. (a) "Good corporate governance standards are essential for the integrity of corporations, financial institutions and markets. They also have bearing on growth and stability of the economy. It is said that any code of Corporate Governance must be dynamic, evolving and should change with changing context and times." In the light of this statement, discuss the recent regulatory initiatives undertaken by regulatory bodies and the government in respect of Corporate Governance to keep pace with changing expectations of investors, shareholders and other stakeholders. (10 marks)
- (b) "The Companies Act, 2013 distinguishes 'management' *vis-a-vis* 'ownership' of the company." Elaborate this statement through Board and Board processes with specific reference to Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI). (10 marks)
- (c) The Companies Act, 2013 has enhanced the scope of Board's report to a greater extent. The disclosures required to be made in the Board's report are numerous. Since the quantity of disclosures and the penalty for non-compliance is huge, the Board has to be very cautious in preparation of the Board's Report. In a sense, Board's Report is now 'broad report'. Examine the above statements in the light of the fact that companies need to engage the services of expert professionals like Company Secretaries to ensure compliance of law and avoid penal actions. (10 marks)
3. While governance advancements have primarily been driven by the need for clarity of enterprise risks and the protection of shareholder value, the inescapable use of technology has created a critical dependency on information technology (IT) that calls for a specific focus on IT governance. As a Company Secretary, suggest a standard framework of IT governance, which ultimately helps to create a linkage between business strategy and IT strategy. (5 marks)
4. "Stakeholder activism in India which was in its infancy for several decades seems to be growing from baby steps to youthful strides." Examine with reference to the provisions of class action suits. (10 marks)
5. Indian markets are witnessing transformation towards better corporate governance and fairness yet it is embedded with several weaknesses. Comment. (5 marks)