



The Companies
Act, 2013

The Insolvency &
Bankruptcy Code,
2016

The Arbitration &
Conciliation Act,
1996



The FEMA, 1999

The SARFAESI Act,
2002

The PMLA, 2002

The FCRA, 2010



The SCRA, 1956

The SEBI Act, 1992

EXPERTISE YOURSELF

A Practical Handbook

Planning, Plotting & Preparing

CA

FINAL (PAPER 4)

Applicable for

May & November, 2020 examinations

CORPORATE AND ECONOMIC LAWS NEW SYLLABUS



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About the Author




The author is a first class master degree holder in commerce and a PhD in the topic of Finance. He is a member of the Institute of Company Secretaries of India. His specialisations are Corporate Laws, Finance & Governance. He has solid and rich experience, exposure and expertise in the CA course arena and lectured widely in CA circuit of members and students conferences, seminars and other workshops. He has handled many MCA assignments from time to time in the area of company law, independent directors, registered valuer and investors' awareness programmes all over India and was briefly a SEBI financial literacy resource person. To add feathers to his cap, he served for two and half decades and retired from the Institute of Chartered Accountants of India as Additional Director. His exposure in the area of various levels of CA course and examinations more particularly in the subject of Law at the Foundation, Intermediate and Final level endured interest to give his best to the CA students community to facilitate their pass in the examinations easily by perfect planning, precise plotting and properly preparing!

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This Practical Handbook is devoted
and dedicated to the CA Final Students
who are eagerly looking forward in
their career progression to become
Promising, Purposeful and Pragmatic
Global Chartered Accountants.



Foreword

This is **eBook Edition** which condenses, composes and capsules heavy load of study materials, Bare Acts, Rules, Notifications, Circulars, Orders etc. before you. Reading around 800 to 1000 pages of modules and materials plus other voluminous bare acts takes a toll of your time.

Thereafter, you require synchronisation of your study with thorough understanding and getting the ability to analyse, interpret, apply, evaluate and synthesising in a given practical situation. **Expertise Yourself**, a Practical Handbook takes you straight into the above aspects chapter wise, section-wise, rule-wise, and more specifically problem oriented wise with analysis and synthesis. In this handbook, there are more than **300** specific chosen problems in corporate and economic laws based on analysis, interpretation, evaluation and synthesis wherever necessary which you can practice and expertise yourself anywhere at your convenience. If you in letter and spirit cultivate the practice of writing answers to model questions under examination conditions, there is definite possibility and brighter chances of your performance graded at par with excellence.

The Practical Handbook covers holistically all the chapters given in the syllabus and problems are based on relevant sections and from the point of view of skill grid and section wise weightage that has been prescribed.

MCQ's are included at the end of every Chapter.

I am sure you will definitely find reading this **Expertise Yourself - A Practical Handbook** less burdensome, thoroughly enjoyable and interesting making it easier for you to first **plan** timely schedule, secondly **plot** important topics of study and then effectively **prepare**.

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‘Plan’ ‘Plot’ & ‘Prepare’

Dear Students,

At the outset, let me take this opportunity in congratulating each and every one of you for reaching the Finals. You might have observed and experienced that at every level of the CA course, it was a different game. Some might not have slipped and flipped through the very first attempt; some slipped once or twice or even more and doesn't mean that your game is lost. A strategy could have fine tuned to have made your best preparations in sync with what examination expects and how to reorient yourself to the level expectations. There is well defined parameter for the new scheme of education and training in terms of its syllabus, content, objective, level of knowledge required, skill assessment grid, section-wise weightage specifications for each and every chapter in the syllabi. Based on the grid specifications and weightage of marks, practical problems are posed in the questions to test how equipped you are as an Expert. Again, few clear easily in their first attempt and others strive and struggle. *The happiest part is that without leaving the game, everyone wins at the end. This is the paradox and paradigm of the course.*

I understand you are under tremendous pressure from morning till night in finishing your articles schedule, leaving no scope for holidays or Sundays and in the midst facing odds of May and November examinations. *Having reached the final lap of the course, early planning and preparing for the examinations during the beginning of the two and half years of training period is critical, crucial and makes your way forward easy.* Often students tend to wait and watch till they become eligible and intend to prepare during the last leg of the articles training period which makes them frenzy, frantic and finding little time. The period of two and half years will fly in no time and ensure that during the period you plan very well in advance by drawing schedules of important topics subject wise and group wise. Before you intend to appear for the Final examinations, clear the eligibility criteria for appearing in the Final examinations by successfully completing the Advanced Integrated Course on Information Technology and Soft Skills (AICITSS). Last minute scouting and scratching for seats in these compulsory programmes when the examination is around the corner makes you to devote in attending the programmes only and thereafter you are left minimum time for preparations.

I have seen students making last minute rush for online registrations to these courses and finding it difficult to get registrations online and thronging the regional offices and branches to accommodate you and completion of these two programmes consume another one month time. Please avoid such last minute hurry burry situations and get to know the details of availability of seats, schedule of programmes and completing it successfully with no hiccups. I hope all of you are well aware and thorough of those compliances. This will set the tone and tenor for your solid preparations whether you intend to appear for both the groups at the same time (*trying is always best than being cautious*) or group wise or otherwise. Choice is entirely yours as you know very well your Strengths, Weaknesses, Opportunities and Threats at your end.

Having stated the above, let me make it simple and clear that the CA examinations to the best of my knowledge, understanding and experience is one of the easy, easier and easiest examinations (*T&C apply*).

There is well laid out structured curriculum, with knowledge grid, section wise weightage for each and every content area. Besides, you are supplied with study modules running around minimum of 800 pages or so for each subject along with supplementary modules wherever necessary, revisionary test papers, series of mock test before the examination, plus host of other materials like capsule of study modules published regularly in the monthly students journal. Added to that there are bare acts, books, attending virtual classes and your own preference of attending coaching classes elsewhere. Having blessed with all the above, all of us are equally blessed with only 24 hours in a day and every student of CA course undergoes the grind and the wind. The encounters in the final examination are different from what you faced in Foundation and Intermediate examinations. Herein, it is mostly practical and application oriented plus there are questions on evaluation and synthesis. *How to plan and prepare strategically allotting time equally for all the subjects?* One thing is very clear that you have no choices or chances that you can skip one Chapter and concentrate on the others as it might so happen that what you skipped appeared in the very first compulsory question and on what you studied, a different question came for which you were not prepared or equipped. Therefore *coverage of the syllabus in entirety is the only choice for you, but there is a chance that you skip what is not important!*

This brings to the subtle point *what is not important for the examinations?* It may be a quite intriguing question or silly but if you sit down alone and calmly analyse, you will get an answer facilitating your easy preparation, confident approach and optimism for success with less time and more energy at your disposal for evenly distributing and balancing time for planning and preparing equally for other group wise papers. *How to go forward and ease of doing your planning the schedule, plotting the topics and perfectly preparing?*

1. **Study the syllabus grid ‘thoroughly’ and ‘thoughtfully’:** This might require your foremost patience, calmness, serenity and one fully day time. The objective in this **Paper 4: Corporate and Economic Laws** states “*to acquire the ability, interpret and apply the provisions of the company law in practical situations*” in respect of Section A relating to Company Law carrying 70 marks and in respect Section B (Securities Laws) carrying 30 marks, it is stated that the objective “*to acquire the ability to analyse the significant provisions of select securities laws*”. Please note down the subtle difference in the objective content of section A and section B. It is clear that applying of provisions of company law (The Companies Act, 2013) in practical situations is warranted, while in respect of securities law, it is the ability to analyse the significant provisions of select securities laws. *This will set the tone and tenor for your planning, plotting and preparation.*

2. **The 3 P's - 'Plan', 'Plot' and 'Prepare':** These three P's of the point is a pointer to your success in the CA examination. Students in general and by and large prepare for the examination in fear, in tense intensively and extensively. Time at their disposal is a constraint due to various day-to-day schedules and as examination days approaches faster and nearer they are left out with meagre planning and preparation for the examination. This point is very crucial for your success. *How to plan, plot and prepare accordingly follows in the subsequent points?*
3. **Ascertain what is important for the examination?** Normally, the rule is that all are important and no scope to leave out anything for chance and choice of yours. To me as a student sitting in your situation, we are lending time unnecessarily on all topics which may not get repeated. Observe the question papers of recent past few examinations. You will agree with me that no two question papers tally like a trial balance and each one excel in its own approach towards topics, problems involved in application in practical situations. Therefore, a simple rule to formulate for time conscience and consciousness is accept the fact that last two examination questions coverage are poised for change and set the trend for the examination in which you intend to appear. One thumb rule is that any changes by way of amendments taking place six months prior to the examination are not applicable. *How to draw lines for it is elaborated in the subsequent points?*
4. **Where to start? How to start? When to end?** This point boils down to your methodology of planning as stated in point no 2 as above. As there are two sections in this paper one consisting of Company Law carrying 70 marks and the other section relating to securities laws carrying 30 marks. *Is it wise to begin with Company Law and end with Securities Laws or vice versa?* There is no security for this question. The answer lies in your ability to analyse and interpret in practical situations like a passenger sitting down in an auto or a taxi, where he is more concerned about the meter reflecting the fare at crossing each kilometre where the driver is focused on destination. The twain shall ever meet is the answer. For example, you may ponder whether to give importance to winding up as under the Companies Act, 2103 or insolvency and bankruptcy proceedings under its Code, 2016. In any examination as far taking it easy with no messy, crossing the border line is the first lap and taking control over the rest is the next and last lap. As per Examination Regulations, you should secure first 40% in order to pass and get 50% in the aggregate. Therefore, which gateway of laws is easy study in order to secure first 40% and which pathway to get balance 10% for your aggregate holds the key to your planning and preparation. Whether to study (section B) securities laws first and then take up company law or vice-versa is not a million dollar question? The answer is given in the subsequent pages (Study Matrix and Order of Study with Time Schedules). *Keep guessing and reading to find your happiness.*
5. **Materials for your study:** Often you are over loaded with modules of study materials and unloading the package takes toll of your patience and stamina as a CA student. You are supplied with bulky modules ranging from 1 to 3, 4, 5 and even more in some subjects like Accounting and Auditing. In this Paper 4 – Corporate and Economic Laws, there are three study modules covering the entire syllabus and pages to read touch nearly 900 to 1000 pages. They set the rules of the game, but to get into the large courtyard of laws, its rules/regulations, schedules followed up numerous notifications, circulars, Orders, rules etc becomes mind boggling! Whatever be the situation, the practical situation warrants you to take the burden as you are expected to be that of an expert in the examination hall. *Any way out? Yes.* It is simple and easy as I stated before CA examination is easy, easier and easiest if T&C are applied. *What are those T&C is described in the end points to this preface?* Let us face it and carry forward the foreword for managing it easily.

6. Theory or Practical? Often and very often student trend is to study from very beginning to end. It consumes lot of your time and sets the boredom. Let us be very practical that there are two parts specified i.e. section wise weightage for subject and skill wise weightages specified under the new scheme of education and training. There are three levels at the Final Course with grid specification in terms of percentage for assessment in each of the levels. Kindly go through the following table (skill wise) which is stated in respect of Paper 4: Corporate and Economic Laws.

Skill wise assessment grid

Paper No & Subject & Section	Level I	Level II	Level III
Paper 4: Corporate and Economic Laws	Comprehension and Knowledge	Analysis and Application	Evaluation and Synthesis
Section A: Company Law (carrying 70 marks)	10% - 20%	60% - 70%	15% - 25%
Section B: Securities Laws (carrying 30 marks)	40% - 60%	40% - 60%	

Section wise weightage

May 2020 examination onwards

FINAL COURSE PAPER 4

CORPORATE AND ECONOMIC LAWS

Sections	Weightage	Content Area
PART I CORPORATE LAWS (70 Marks)		
SECTION A – COMPANY LAW		
		1. The Companies Act, 2013 and Rules framed thereunder in its entirety with specific reference to section 149 onwards
I	30% - 35%	(i) Appointment and Qualifications of Directors (ii) Meetings of Board and its powers (iii) Appointment and Remuneration of managerial Personnel
II	20% - 25%	(iv) Inspection, Inquiry and Investigation (v) Compromises, Arrangements and Amalgamations (vi) Prevention of Oppression and mismanagement
III	25% - 40%	(vii) Winding Up (viii) Companies incorporated outside India (ix) Miscellaneous Provisions (x) Adjudication and Special Courts (xi) National Company Law Tribunal and Appellate Tribunal
		2. *Corporate Secretarial Practice – Drafting of Notices, Resolutions, Minutes and Reports
SECTION B – SECURITIES LAWS		
IV	15% - 20%	1. The Securities Contract (Regulation) Act, 1956 and the Securities Contract (Regulations) rules, 1957 2. The Securities Exchange Board of India Act, 1992 and SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015
PART II ECONOMIC LAWS (30 marks)		
I	20% - 30%	1. The Foreign Exchange Management Act, 1999 (FEMA): Introduction, broad structure of FEMA, definitions, regulation and management of foreign exchange, contravention and penalties and miscellaneous provisions

		2. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Important Definitions, Management of Assets by Banks and the Financial Institutions
II	20% - 30%	3. The Prevention of Money Laundering Act, 2002 (PMLA) – Definitions, Punishment for the offence of money laundering, Obligations of Banking Companies, Financial Institutions and Intermediaries, or a person carrying on designated business or profession, Appellate Tribunal, Special Courts, Procedure for attachment and Confiscation of Property and Recovery of Fines and Penalties
III	20% - 30%	4. The Foreign Contribution Regulation Act, 2010 – Definitions, Regulation of Foreign Contribution and miscellaneous provisions 5. The Arbitration and Conciliation Act, 1996 – General Provisions, Arbitration agreement, Tribunal, Conciliation.
IV	20% - 30%	6. The Insolvency and Bankruptcy Code, 2016 – Preliminary, corporate insolvency resolution process.

* Since questions will be based on any of the Chapters pertaining to the Companies Act, 2013, so no separate grid has been assigned to this Chapter.

Analyse, Evaluate and Synthesise the above two tables carefully and you will know that your planning is already in frame. *What to concentrate?* Be practical and you will avoid reading many of theoretical provisions of laws and this begins your preparation schedule.

- 7. What is most important for the examinations?** The monthly CA student journal contains information which is useful to students during examination season. Two/three months ahead of examination, announcement is given in respect of applicability/non-applicability of areas of study. If you take into account these aspects, you are narrowing your time for preparation and zeroing down to the ground realities. *Catch and take hold of these announcements in letter and spirit* and you find there is a relation between what is announced and what is asked as a question out of the same.
- 8. Number Game theory:** Since you are at the final level and level of knowledge expected that of an expert, presentation of answers hold the key though you know the answer. Therefore, to add spice to your answer, the key part is not the answer but the number game. This number game is nothing but quoting of relevant main section forming part of your answer. For a good presentation of your answer, invariably the relevance of section number adds greenery. *How to remember the section number and how to master the game* is given elsewhere in this **Expertise Yourself** and you will find it amazing yet true that once you are able to recollect the number of the section flow starts with regard to its content. To summarise this important point that from examination point of view presenting the answer practically and logically, answering with reference to the section gives you added weightage. Remembering section number makes your answer a difference with significance. I have given a matrix table at the end of the handbook where you practice in filling up the blanks by writing down the relevant section number for the given subject matter. *Practice this for a week and you find that you are becoming an amazing and awesome expert!*
- 9. Citation of Case laws, Rules/Regulations, Notifications, Circulars etc:** It is a herculean task for you as you are confronted with various statutes of corporate, securities and economic laws. The Companies Act, 2013 is subject to various amendments from time to time and Rules relating thereto and to add justice you may in general write the Chapter Heading name for which you add the word Rules thereto so that you are in sync with Act, amendments, its relevant Rules. As you go through the various practical questions given in this Expertise

Yourself, you may find the answers comprises the relevant sections, its rules etc and through reading you get hold of these tickets to your success wickets.

10. What is the ticket to your success? Not really your hall ticket or admit card. But admittedly, finally and most ideally, all the above points are important but will lack lustre, if you do not have the writing practice. If you have the habit of writing and not mere reading, you will be able to analyse the problems, apply it practically in the given situations, interpret them with what is given in the relevant section and able to evaluate and synthesise your answer. To cultivate it rightly and correctly, I urge upon you very seriously that every day despite your hectic article schedules, audit work, attending classes, social interaction with your family and friends in any day of 24 hours and before you go to sleep, take out the suggested answer and write as same as it is given there the answer in a note book or diary maintained separately for each and every subject. Follow religiously and seriously for first 21 days, you will a tremendous change in yourself, your approach to what examination demands and what is in your command. *Be it any subject, taking mock tests and daily doing writing practice takes you to the real gateway of success in CA examinations.*

Before I conclude this preface, after planning precisely, plotting carefully and preparing thoughtfully for each of the Chapter, you can narrow down your questions as Possible, Probable and Plausible. Only three questions in any Chapter in any subject for that matter to be chosen, so that before the day of the examination, you can revise, revisit and look forward to what you expected!

Enjoy Reading my Practical Handbook - Expertise Yourself consisting Practical Application Oriented Problems and Solutions with evaluation and synthesis and MCQ's at the end of each Chapter.

Good Luck and My Best Wishes.

Acknowledgments

**GururBrahma GururVishnu GururDevo Maheshwaraha
Guru Saakshaat ParaBrahma Tasmai Sri Gurave Namaha**

I acknowledge with folded hands to matha, pitha, guru, devo who are the four pillars of success in one's career, mission, vision and endeavours at various stages of human life

I acknowledge and prostrate humbly with all sincerity the gurukul in shaping us from being human to become more humane towards family, friends and society at large

I acknowledge with all humility the Institute of Chartered Accountants of India (ICAI), my bread and butter and enriching me with wide ranging assignments, exposure and platform during the eventful two and half decades of stimulus service with smile

It would be out of place and my duty, if I do not mention my professional alma mater, the Institute of Company Secretaries of India (ICSI) which gave me a fertile and sterile knowledge and wisdom in not only acquiring coveted membership but propounding continuous knowledge updates through their literatures from time to time

Finally

I am blessed and bestowed to have a beautiful family, friends teachers & gurus with ethics, ethos, encouragement and value support throughout

I am deeply touched and my gratitude to each and every one of them.



Contents

Dedication	iii
Foreword	v
Preface	vi
Acknowledgments	xii
Study Matrix	xv

Part I: CORPORATE LAWS (70 Marks)

Section A: COMPANY LAW

Chapter 1	Appointment and Qualification of Directors	3
Chapter 2	Meetings of Board and Its Powers	17
Chapter 3	Appointment and Remuneration of Managerial Personnel	33
Chapter 4	Inspection, Inquiry and Investigation	41
Chapter 5	Compromises, Arrangements and Amalgamations	51
Chapter 6	Prevention of Oppression And Mismanagement	59
Chapter 7	Registered Valuers	65
Chapter 8	Removal of Names From The Register of Companies	69
Chapter 9	Winding Up	77
Chapter 10	Companies Incorporated Outside India	85
Chapter 11	Compounding of Offences, Adjudication, and Special Courts	91
Chapter 12	Miscellaneous Provisions	97

Chapter	13	National Company Law Tribunal and Appellate Tribunal	107
Chapter	14	Corporate Secretarial Practice - Drafting of Notices, Resolutions, Minutes And Reports	113
Chapter	15	Producer Companies	121

Section B: SECURITIES LAW

Chapter	16	The Securities Contract (Regulation) Act, 1956 and the Securities Contract (Regulation) Rules, 1957	123
Chapter	17	The Securities Exchange Board of India Act, 1992	131

Part II: ECONOMIC LAWS (30 Marks)

Chapter	18	The Foreign Exchange Management Act, 1999	145
Chapter	19	The Prevention of Money Laundering Act, 2002	161
Chapter	20	The Foreign Contribution (Regulation) Act, 2010	167
Chapter	21	The Arbitration and Conciliation Act, 1996	173
Chapter	22	The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002	179
Chapter	23	The Insolvency and Bankruptcy Code, 2016	189

Order of Study of Chapters			
No	Name of the Act	Study Time	Marks weightage
1	THE SECURITIES CONTRACT (REGULATION) ACT, 1956 & RULES 1957	1 DAY	4 marks
2	THE FOREIGN CONTRIBUTION (REGULATION) ACT, 2010	1 DAY	4 marks
3	THE PREVENTION OF MONEY LAUNDERING ACT, 2002	1 DAY	4 marks
4	THE INSOLVENCY AND BANKRUPTCY CODE, 2016	2 DAYS	6 to 8 marks
5	THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFESI)	2 DAYS	4 marks
6	THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999	2 DAYS	4 to 6 marks
7	THE ARBITRATION AND CONCILIATION ACT, 1996	1 DAY	4 marks
8	APPOINTMENT AND QUALIFICATIONS OF DIRECTORS	2 DAYS	8 marks
9	MEETINGS OF BOARD AND ITS POWERS	2 DAYS	8 marks
10	APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL	2 DAYS	8 marks
11	INSPECTION, INQUIRY AND INVESTIGATION	1 DAY	4 marks
12	PREVENTION OF OPPRESSION AND MISMANAGEMENT	½ DAY	4 marks
13	REGISTERED VALUERS	¼ DAY	4 marks
14	REMOVAL OF NAMES FROM THE REGISTER OF COMPANIES	¼ DAY	4 marks
15	NATIONAL COMPANY LAW TRIBUNAL & APPELLATE TRIBUNAL	¼ DAY	4 marks
16	MISCELLANEOUS PROVISIONS	½ DAY	4 marks
17	COMPANIES INCORPORATED OUTSIDE INDIA	½ DAY	4 marks
18	COMPOUNDING OF OFFENCES, ADJUDICATION AND SPECIAL COURTS	1 DAY	4 marks
19	COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS	½ DAY	4 marks
20	CORPORATE SECRETARIAL PRACTICE – DRAFTING OF NOTICES, RESOLUTIONS, MINUTES AND REPORTS	1 DAY	4 marks
21	SEBI ACT, 1992, SEBI (ICDR) REGULATIONS & SEBI (LODR) REGULATIONS, 2015	2 DAYS	4 marks
22	WINDING UP	2 DAYS	4 marks
23	PRODUCER COMPANIES	NIL	
	Writing Practice – One Answer per day	30 minutes	50 TO 70 MARKS

Sample Questions

- 1 Mr. Wise is an independent director in All Well Ltd. Alternatively, he is also an independent director in one of the associate company and has been receiving remuneration as sitting fee and participation fee for Board meetings Besides, he had been purchasing goods from the company and it was contended by a group of stakeholders that Mr. Wise is otherwise holding pecuniary relationship in the parent company as well its associate which would attract the disqualification of being an independent director under the purview of the relevant provisions of the Companies Act, 2013. Comment.**

The term 'pecuniary relationship' conveys different connotations. Section 149 (6) provides that an independent director should not have pecuniary relationship with the company, its holding, subsidiary or associate company or their promoters or directors during the two immediately preceding financial years or during the current financial year. This matter was discussed by the MCA with SEBI and it is clarified that 'pecuniary relationship' provided in section 149(6) of the Act, 2013 does not include receipt of remuneration, from one or more companies by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in Board or other meetings and profit related commission approved by the members in accordance with the relevant provisions of the Act. Based on the above clarification, Mr. Wise cannot be said to have pecuniary relationship to attract disqualification is being an independent director in one of the associate company of All Well Ltd. As regards of purchase of goods or services from the company provided it is in the ordinary course of business at arm's length price as it would be available or payable by the general public which are 'take way transactions' (section 188) will not be said to have pecuniary relationship.

- 2 Mr. Tactful was appointed as Managing Director for life by the Articles of Association of a private company incorporated on 1st June, 2019. The Articles also empowered him to appoint a successor. Accordingly, he appointed by a 'Will' his only son to succeed him after this death. In the light of provisions of the Companies Act, 2013, can his son succeed his father after his death as managing director of the company?**

According to sub-section (6) of section 166, a director of a company shall not assign his office and any assignment so made shall be void. However, the Supreme Court in Oriental Metal Pressing Works (P) Ltd. v. Bhaskar Kashinath Thakoor in SC 573 (1961) 3 SCR 329 observed that an appointment can be made only if the office is vacant. Transfer by way of assignment and appointment are entirely different things. The word 'his' used in the section would indicate that the office contemplated was one held by the director at the time of assignment. The word 'his' indicates that an appointment by a director to the office which he previously held but did not hold at the date of appointment was not to be included within the word 'assignment'. Therefore Mr. Tactful has not made any assignment of his office which is void as per the section and his son can succeed his father as Managing Director only after his father's death.

- 3 A requisite group of shareholders of Delta Ltd submitted an application before the NCLT that the affairs of the company are being conducted in an oppressive manner and sought for relief. However another group of shareholders contended that the application is frivolous on the ground that a single applicant member has made the application by annexing the signature of the rest and therefore consent in writing has not been obtained and it is not benefitting of all of them. Decide.**

Section 244 (2) of the Companies Act, 2013 states that where any members of a company are entitled to make an application under (in case of company having share capital not less than 100 members or 1/10th of total number of its members whichever is less), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them. The provision is not a mandatory but directory in nature. The word 'consent' used lays down that the consent should indicate that the person, who has affixed his signature, had applied his mind to the question before them and has given consent for certain actions being taken and purpose for which consent is taken. That means the consent should reflect that at the time when it was obtained the person whose, "consent" was taken was made aware as to what purpose it was to be utilized. The consent in writing as used has to be a conscious approval of an action proposed to be taken, meaning thereby, it has to be before filing of an application under section 244. This implies an application of mind to a particular allegation and the relief prayed. In the instant case, if the prayer of the petition indicates that signatures which have been annexed have consciously consented to what is prayed for in the petition, there is no ground for others to lend that it is a frivolous petition.

- 4 Very Well Ltd., was incorporated as start up company in the last six months. Soon after its incorporation, the company could not find its seed capital and the prospects of its issuing prospectus for more subscription capital is bleak in the near future. Some liabilities were already piled up and for which charges were made with the Registrar and by the creditors. In the given scenario, as a CA who is well acclaimed in the incorporation domain and to let the companies grow as a going concern, Advice**

The Companies Act, 2013 provides and envisages for two scenarios in the given situation as options for Very Well Ltd. Depending upon the circumstances the company in the instant case can take either of the option and decision.

Scenario 1

Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company. Here "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

Scenario 2

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies. A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register

and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. A company cannot remain as a dormant company for perpetuity. The company shall make a decision to either revert to active status within 5 years or the Registrar is empowered to strike off the name of the company from its records. (Section 248)

Analysis & Synthesis

In such situations, choosing to attain the status of a dormant company and protecting the legal identity and business name of the company is a far more viable option than winding up or closing down the company and having to incorporate it once again in the future. The Companies Act, 2013 has introduced the concept of dormant company status in India, which offers great benefit to companies who, due to the nature of their business, may not be able to commence business for a long time from the date of incorporation, for instance any business for creation of intellectual property or for a future project. The concept can prove to be very useful for construction and real estate companies who can incorporate a company and purchase a property or land for future use at lesser rates, and subsequently get the status of dormant company. In the given case, the company was incorporated just six months back and therefore it can make a request to the Registrar to enter and indicate the status of the company as Dormant. Thereafter, the company can fulfil other conditions to revive its normalcy and at the same time avoid becoming inactive thereafter in order to avoid the notice from the Registrar indicating removal of its name from the Register of Companies.

- 5 Mr. Rajeev was appointed as a Technical Member of the National Company Law tribunal. At the age of 64 years, he resigned by giving a Notice to the Govt. of India as a Member of the Tribunal. The Government has advised him to carry on the post for the rest of one year period as he will be completing sixty five years of age. Decide.**

According to section 416, of the Companies Act, 2013, the President, the Chairperson or any Member may, by notice in writing under his hand addressed to the Central Government, resign from his office. However, the President, the Chairperson, or the Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest. In the given case, Mr Rajeev can be asked by the Government to hold on the post as a Member for a period of 3 months or till such time his successor has been appointed whichever is earlier.

- 6 In view of the severe constraints of space and to provide better logistic support and speedier services a recognised stock exchange intends to construct an additional floor of its exchange outside current location of its building where its operations are being carried out. Is it permissible within the regulatory frame work of SCR Act, 1956?**

According to section 13A of the Act, 1956, a stock exchange may establish additional trading floor with the prior approval of the Securities and Exchange Board of India in accordance with the terms and conditions stipulated by the said Board. “Additional trading floor” means a trading ring or trading facility offered by a recognised stock exchange outside its area of operation to enable the investors to buy and sell securities through such trading floor under the regulatory framework of that stock exchange. The said exchange may establish additional trading floor with the prior approval of the SEBI in accordance with the terms and conditions stipulated by the said Board.

- 7 There exists in the balance sheet of a borrower showing value of an unsecured land under the item 'land and buildings' and asset reconstruction company (ARC) wants to acquire the same by issuing security receipts. Is it a financial asset and whether it can be done so Under SARFESAI, 2002?**

The definition of financial asset is given in section 2(l) of the Act, 2002. It means debt or receivables and includes claim, right, title or interest in any tangible/intangible asset etc. An asset which is not a financial asset cannot be securitised, acquired or transferred under the Act. Unsecured land is not a financial asset which the Asset Reconstruction Company can acquire.

- 8 A person who has been granted permission by the Central Government to receive foreign contribution under the FCRA, 2010 finds that he may be able to utilise only 80% of the contribution and desires that out balance 10% be transferred to a Orphanage which is registered and 10% to a Pet Animals Welfare Club and not being registered. State whether his proposals are in line with the provisions of the FCRA, 2010.**

Prohibition to transfer foreign contribution to other person (Section 7): No person who (a) is registered and granted a certificate or has obtained prior permission under this Act; and (b) receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act. Such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government.

Rule 24, FCRR, 2011: Procedure for transferring foreign contribution to other registered or unregistered persons.

Any person intending to transfer the foreign contribution may make an application to the Central Government in Form FC-10. The Central Government may permit the transfer in respect of a person who has been granted the certificate of registration or prior permission under section 11 of the Act, in case the recipient person has not been proceeded against under any provision of the Act. (3) Any transfer of foreign contribution shall be reflected in the returns in Form FC-6 as well as in Form FC-10 by the transferor and the recipient.

In case the foreign contribution is proposed to be transferred to a person who has not been granted a certificate of registration or prior permission by the Central Government, the person concerned may apply for permission to the Central Government to transfer a part of the foreign contribution, not exceeding ten per cent, of the total value of the foreign contribution received. The application shall be countersigned by the District Magistrate having jurisdiction in the place where the transferred funds are sought to be utilised. The District Magistrate concerned shall take an appropriate decision in the matter within sixty days of the receipt of such request from the person. The donor shall not transfer any foreign contribution until the Central Government has approved the transfer.

- 9 A Joint Venture agreement between a Korean Car manufacture with a leading Indian Tyre Manufacturer and Supplier to the cars contained a clause that any dispute that arises in regard to the car tyres supplied shall be arbitrated in Chennai. Before the agreement was entered into there were old disputes still unsettled. State whether**

both the disputes (existing and future) can be bundled in the new clause as per the Arbitration and Conciliation Act, 1996?

There are two situations in the instant case. One, referring the disputes arising in future in relation to and in connection with the principal contract which would be submitted for arbitration. This is an arbitration clause in the principal contract. As regards, the disputes that already exist for which there was no clause or agreement to the effect, the agreement will be a mere submission for consideration before the two parties and not necessarily an agreement to the main contract.

- 10 An application for Corporate Insolvency Resolution Process was received by the Adjudicating Authority under IBC, 2016. The authority rejected the application pointing certain defects and later on they were rectified by the applicant and admitted by the Authority. The applicant wants to know from which date the process for insolvency will start in his case.**

The adjudicating authority may either accept or reject the application for corporate insolvency process within 14 days from the date of receipt of the application. If there are certain defects pointed out by the authority, it should be rectified within 7 days from the date of receipt of such notice. The insolvency resolution process shall commence from the date of admission of application by the adjudicating authority.

- 11 A Group of creditors contemplates a proposal that instead of resolving the insolvency resolution process in a usual manner be expeditiously completed before the Adjudicating Authority. What sort of channel would you suggest as an Insolvency Resolution Professional to the creditors group as per the IBC, 2016?**

A corporate insolvency resolution process carried out in accordance with this Chapter IV of the Code, 2016 shall be called as fast track corporate insolvency resolution process. An application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely:-

- a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or*
- b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or*
- c) such other category of corporate persons as may be notified by the Central Government.*

The fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date. The resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast track corporate insolvency resolution process beyond ninety days if instructed to do so by a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy five percent of the voting share. The Adjudicating Authority is satisfied that the subject matter of the case is such that fast track corporate insolvency resolution process cannot be completed within a period of ninety days, it may, by order, extend the duration of such process beyond the said period of ninety days by such further period, as it thinks fit, but not exceeding forty-five days. Any extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once.

MCQ's

I. The cooling period for becoming again a small shareholder is

- a) One year
- b) Two years
- c) Three years**
- d) There is no such cooling period.

II. Which of the following personnel is treated as a KMP?

- a) CEO/CFO
- b) MD/WTD
- c) Company Secretary
- d) all of them as above**

III. The expression "arm's length transaction" means

- a) a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest**
- b) a transaction between two related parties that is conducted as if they were related, so that there is conflict of interest
- c) a transaction where there is materiality/relatively between relative persons
- d) none of the above

IV. In case of death of the person who has been in prosecution under the PMLA, 2002, the proceedings

- a) will come to an end
- b) will continue**
- c) will devolve on legal representative
- d) court to decide

V. In the order of distribution of liquidation proceeds, which shall stand as second item of priority waterfall in the order?

- a) workmen dues for the period of 24 months and dues of the secured creditors**
- b) wages and any unpaid dues owed to employees, other than workmen for the period of 12 months
- c) dues of central government and state government
- d) other debts and dues.

Problems and Multiple Objective Type Questions in various Chapters

Chapter	Subject Mater	No of Practical Problems	No of MCQ's
Part I: CORPORATE LAWS			
Section A: COMPANY LAW (70 Marks)			
1	APPOINTMENT AND QUALIFICATIONS OF DIRECTORS	27	25
2	MEETINGS OF BOARD AND ITS POWERS	30	20
3	APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL	9	13
4	INSPECTION, INQUIRY AND INVESTIGATION	11	8
5	COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS	7	9
6	PREVENTION OF OPPRESSION AND MISMANAGEMENT	3	2
7	REGISTERED VALUERS	1	3
8	REMOVAL OF NAMES FROM THE REGISTER OF COMPANIES	2	7
9	WINDING UP	7	25
10	COMPANIES INCORPORATED OUTSIDE INDIA	3	8
11	COMPOUNDING OF OFFENCES, ADJUDICATION AND SPECIAL COURTS	6	8
12	NATIONAL COMPANY LAW TRIBUNAL & APPELLATE TRIBUNAL	3	5
13	MISCELLANEOUS PROVISIONS	9	4
14	CORPORATE SECRETARIAL PRACTICE – DRAFTING OF NOTICES, RESOLUTIONS, MINUTES AND REPORTS	5	-
15	PRODUCER COMPANIES (BASED ON THE COMPANIES ACT, 1956 AND HENCE NOT RELEVANT FROM EXAMINATION PERSPECTIVE)	-	-
Section B: SECURITIES LAWS			
16	SECURITIES CONTRACT (REGULATION) ACT, 1956 & SCRA, RULES, 1957	11	10
17	SEBI ACT, 1992, SEBI (ICDR) REGULATIONS & SEBI (LODR) REGULATIONS, 2015	-	8
Part II: ECONOMIC LAWS (30 Marks)			
18	THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999	21	6
19	THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFESAI)	17	8
20	THE PREVENTION OF MONEY LAUNDERING ACT, 2002	9	9
21	THE FOREIGN CONTRIBUTION (REGULATION) ACT, 2010	8	6
22	THE ARBITRATION AND CONCILIATION ACT, 1996	11	10
23	THE INSOLVENCY AND BANKRUPTCY CODE, 2016	12	12

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