Corporate & Allied Law – November 2014 - CA Final.
Level of paper - Easy.

Question no. 1 is compulsory.
Attempt any five questions from the remaining six questions.

Paper has total seven questions out of which question no 1 was compulsory. Along with option, paper was of 120 Marks, out of which 86 marks of questions were from company law and 34 marks questions were from allied law.

Question-1(a)
On recommendation of the board of directors of DJA Company Limited, Mr. R is appointed at the company's annual general meeting held on 1st October, 2014 as company's auditor for period of 10 years. A resolution to this effect was passed unanimously with no vote against the resolution. Explaining the provisions of the Companies Act, 2013 relating to the appointment and re-appointment of auditors:

(i) Examine the validity of the above resolution
(ii) What shall be your answer in case of an audit firm M/s. R & Associate is appointed as the company's auditor? (5 Marks)

Answer -1(a)

Analysis: Question is from provisions of Companies Act, 2013. It was expected that ICAI will ask one or two questions from accounts and audit portion. It is core area for CA Final student. Question do not only ask your advice, it also demand "examine provision". It means students need to write relevant provision first. Sound understanding is also require on part of Rule 3 of the Companies (Audit and Auditors) Rule 2014. Good amount of weightage is expected for May 2015 examination from accounts and audit.

I. Resolution passed by company is not valid because company can't appoint any person as its auditor for period more than 5 years at time.
II. Answer will be same even if audit firm M/s. R & Associates is appointed as auditor as auditor can be appointed for one term of maximum five years at annual general meeting. This provision is equally applicable whether auditor is individual or firm.

Question – 1 (b)
The board of directors of XYZ company Limited at its meeting declared a dividend on its paid up equity share capital which was later on approved by the company's general meeting. In the meantime the directors at another meeting of the board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investments for the company. As a result dividend was paid to shareholders after 45 days. Examining the provisions of Companies Act, 2013, state:

(i) Whether the act of directors is in violation of the provisions of the Act and also the consequences that shall follow for the above act of directors?
(ii) What would be your answer in case the amount of dividend to a shareholders is adjusted by the company against certain dues to the company from the shareholders? (5 Marks)

Answer -1(b)

Analysis: It seems that failure to pay dividend is examiner's favorite topic from dividend chapter. If you refer last several examination, failure to pay dividend had been asked several times. But real problem with concept here is that, students are not able to remember penalty and % of interest. Question is from provisions of Section 127 of Companies Act, 2013.

I. Yes, it is in violation of act. If dividend is not paid within 30 days or dividend warrant is not posted within 30 days of its declaration, the company is liable to pay simple interest @ 18 % p.a. during the period default continues. Every director is liable for imprisonment up to 2 Years. He is liable if he has committed it knowingly. In addition, he is liable to pay fine of Rs. 1,000 per day till time default continue.

II. Where the dividend has been lawfully adjusted by the company against any sum due to the company from the shareholder. If so, dividend payment can be adjusted against such lien or debt. If company has adjusted money of divided against sum amount due to it, non-payment of dividend will not be attract violation.

Question 1 (c)

Mr. Bhagvath, recently acquired 76% of the equity shares of M/s. Renowned company Ltd., in the hope of earning good dividend income. Unfortunately the existing board of directors have been avoiding declaration of dividend due to alleged inadequacy of profits. Unconvinced, Mr. Bhagvath seeks permission of company to allow to him to examine the books of accounts, which is summarily rejected by the company. Examine and advise the provisions relation to inspection of books of accounts and remedy available. (4 Marks)

Answer -1(c)

Analysis: One more question from Accounts and audit chapter. Section 128 of Companies Act, expressly authorise director to inspect books of account but not to members of company. Earlier act was allowing this right which is not present in new act. Students can't digest this omission.

The members or shareholders of company are not vested any right to inspect books of account of company under Companies Act, 2013. However member or shareholders of company may be permitted to inspect books of account if article of association of company authorise inspection to members.

Question -1(d)

Central government has received complaints regarding improper functioning of stock exchange. Explain the powers of the central government under Securities Contracts (Regulation) Act, 1956 to suspend the business of stock exchange (6 Marks)

Answer 1(d)

Analysis: Question 1(d) is almost from SEBI Act or SCRA. You can omit allied law and take risk but you can't take chance to omit SEBI Act and SCRA. SEBI IS EXAMINER'S FAVOURITE BABY. Most of students are not able to write answer question on SEBI or SCRA because of its much technical language. Student must practice it again and again.

Please refer Section 12 of Securities Contract Regulation Act, 1956.

Question 2 (a)

Referring to the provisions of the Companies Act, 2013, examine the validity of the following:

(i) **The board of directors of AJD Limited appointed Mr. N as an alternate director for a period of two months against a director who has proceeded abroad on leave for a period of 6 months. Article of association of the company is silent.**

(ii) **Mr. P who is not qualified to be appointed as an independent director by the board of directors of XYZ Company Limited, for an independent director, as an alternate director.**

(iii) **On the request of bank providing financial assistance the board of directors of PQR Limited decides to appoint on its board Mr. Peter, as nominee director. Articles of association of the company do not confer upon the board of directors any such power. Further, there is no agreement between the company and the bank for any such nomination. (8 Marks)**

Answer -2(a)

Analysis: Question from few sections applicable from Director Chapter. It is assumed that this chapter has 25-30 marks weightage. But gradually, weightage from this chapter has reduced to approximately 15 marks. Question is on alternate director. Students mix up provisions of alternate, additional and nominal director with one another and its source of mistake. Question here is very straight and simple.

I. Please refer Section 161 (2) of Companies Act, 2013. No. AOA does not authorise.
II. Appointment of P is not valid as alternate director to independent director.
III. Company can't appoint nominee director without loan agreement and provision in its AOA.

Question- 2(b)
(i)
Following is data relating to Prince Company limited:

Authorised capital (Equity shares)	**Rs. 100 Crores**
Paid up capital	**Rs. 40 Crores**
General Reserve	**Rs. 20 Crores**
Debenture redemption reserve	**Rs. 10 Crores**
Provision for taxation	**Rs. 5 Crores**
Long (Long term)	**Rs. 10 Crores**
Short term creditors	**Rs. 3 Cores.**

Board of directors of the company by a resolution passed at its meeting to borrow an additional sum of Rs. 90 Crores from the company's bankers. You being the company's financial advisors, advise the board of directors the procedure to be following as required under the Companies Act, 2013. (5 marks)
(ii)
Mr. N is appointed as an additional director by the board of directors of MNR Company limited at its meeting held on 1st October, 2014 for a period as permitted by the law. Draft a resolution and state the body which appoints N. (3 Marks)

Answer -2(b) (i)

Analysis: Question from New provision. Section 180 of Companies Act, 2013. Just apply theory to calculation. Find out limit and decide. Question is simple and check your understanding on part of board's power. But writing answer of this question require good presentation. Three marks drafting could be threat for those who are not good at it. It is my observation that ICAI is asking one small question from 3-5 marks on drafting aspect in every paper.

Please refer Section 180(1) (c) of Companies Act 2013. Prior consent of the shareholders in general meeting required.

Answer -2(b) (ii)
Board Resolution
RESOLVED THAT pursuant to the provisions of article 33 of the Articles of Association of the company, Shri "N" (DIN______) who has signified his consent to act as a director, be and is hereby appointed as an additional director of the company to hold office till the next annual general meeting.

Question 3 (a)
What securities are not eligible for the computation of minimum promoters' contribution in case of public issue of shares by a company according to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009? State the cases in which the requirements of minimum promoters" contribution to an issue is not applicable? (8 Marks)

Answer – 3(a)

Analysis: SEBI Guideline. For which, students have no good guideline available. Students just rote it or try to avoid it. Most of students left the question, considering that it is out of course as it was not given in leading book and other hand book. This hand book is not handy tool at all. More over many classes material are making guideline short to give smooth effect to student. Remember, there is no short cut to success. Sometime short cut will cut your career short. Most of students left this question. Good selection by examiner and ICAI. I am loving it.

Please refer Regulation 33 & 34 of SEBI ICDR Regulation

Question 3(b)
Explain the concept of 'CSR' (Corporate Social Responsibility) as introduced by the Companies Act, 2013. Examining the provisions of the Act, answer the following:

- **(i)** **Which companies are required to constitute a CSR Committee?**
- **(ii)** **Which companies are excluded from the requirements of the provisions of the act in relation to CSR Committee?**
- **(iii)** **What is the minimum contribution the companies are required to make towards CSR? (8 Marks)**

Answer 3(b)

Analysis: Again from Accounts and audit chapter. Some students may classify it in Board meeting and its power as board need to constitute CSR Committee. Again emphasis from new provisions. CSR will be talk of town and future too and you can expect something from Section 135 in next few attempts too. The question was based on threshold limit. Students are not able to remember so many different limits. If you are not good, write all these kind of limits on one paper and pin up on your board.

Refer Section 135. If the company attract any of threshold limit as specified in Section 135, such company needs to spend 2% of its average net profits for the immediately preceding three years on CSR activities.

Question 4(a)
M/s. Zebra Private Limited was incorporated in the year 2010 under the Companies Act, 1956 by 3 brothers, namely A, B and C. All the three were Promoter-directors named in the Articles of Association and subscribed for 100 shares each in the company through Memorandum of Association. Thereafter, from time to time, further shares were allotted in proportion of one-third to each of them and in due course the company started earning substantial profits. Due to greed of money, the two brothers, namely A and B joined hands together and assumed complete control of the company leaving their brother C in lurch. Both the brothers got further shares allotted to themselves, thereby their joint shareholding increased from 66% to 90%, while the shareholding of C got reduced from the erstwhile 33% to 10%. No notice of any Board Meeting was sent to C, who was sidelined and was also removed as a Director.
Aggrieved by the decisions taken by his two brothers at his back, C seeks your advice for taking out appropriate proceedings before the Court or Judicial authority of competent jurisdiction. Also suggest the nature of reliefs he may claim while filing his case. (8 Marks)

Answer 4(a)

Analysis: Very poor selection of question. It is repeated question. It was asked in November 2006. Only names are changed. No change in any fact or even % of shares holding. After asking several good quality questions, asking such type of tested question is not good product mix. ICAI and its examiner need to work little hard on designing more practical questions. Students with reading of practice manual were happy. Direct pm se….for students learning lesson is that – they should refer all past examination questions.

Mr. C is advised to file a petition under Section 397 of the Act. He may seek the following reliefs:

- ✓ the allotment of further shares be declared null and void and set aside.

- ✓ the removal of the petitioner, Mr. C be declared as null and void and set aside.
- ✓ The Board of Directors be re-constituted with an independent person in addition to directors.
- ✓ the petitioner may be appointed as Managing director of the company having substantial powers of management.

Question 4(b)

M/s. Eternal Health Ltd was facing acute financial difficulty as operations were continuously disrupted due to (a) non-availability of raw material (b) successive drought in its marketing areas and loss of demand and (c) frequent breakdown due to non-replacement of old plant and machinery. On the verge of liquidation, the management proposes one last arrangement between creditors and the company, whereby the creditors have to forego 50% of their dues to the company. This has evoked strong protect from some of the creditors who may block the arrangement. You are requested to examine the arrangement in the light of the Companies Act, 1956 and advise the course of action/procedure to be adopted by the company to implement the same. (8 Marks)

Answer 4(b)

Analysis: Question from Compromise and arrangement chapter. Most of students are not aware of exact procedure. They know some of the points. Question is about rendering advice and procedure to be followed. First, student should decide which scheme is most applicable in reference to given fact and then write down procedure. Most of students are confused with arrangement, compromise, amalgamation, merger and take over.

The proposed scheme involves as a compromise or arrangement with members and creditors and it attracts Section 391 of Companies Act, 1956. Procedure for compromise under Section 391 of Companies Act, 1956 should be followed.

Question 5(a)

JKL Company Limited has gone into winding up. The winding up proceeding have already commenced but the winding up could not be completed within period of two years. Referring to the provisions of the Companies Act, 1956, answer the following:

- **(i) As the official liquidator of the company what duties you are required to perform in relation to filing of petition.**
- **(ii) What shall be your answer in case the company in question is a government company?**
- **(iii) What consequences follow in case the official liquidator does not comply with the legal requirements in relation to the above. (8 Marks)**

Answer 5(a)

Analysis: Only best question, I like from entire paper. Most of students omit winding up and its provisions from their reading. Winding up is lucrative area of practice in professional life. And those who have gone through winding up, they usually follow touch and go method while referring it. It is question on duty of liquidator.

Liquidator is required to prepare further report when he is of the opinion that fraud has committed in promotion or formation of company. He is required to maintain accounts in prescribed forms and submit receipt and payment accounts twice in year. In the case of voluntary winding up which is continued for period more than one year, liquidator should call general meeting of company at end of first year from the commencement of winding up and at end of each succeeding year within 3 months of each year. Audited accounts, his act and dealing in winding up and winding up position shall lay before general meeting. Failure on part of liquidator will make him liable to pay fine of Rs. 1000 in respect of each failure. Liquidator is required to file audited copy of accounts with court and registrar. Audited copy is also sent to creditor and registrar. Liquidator has to keep all monies in schedule bank account as per Section 553 of Companies Act, 1956.

If the government company is under liquidation, copy of accounts is placed before central government or statement government as the case may be.

Where winding up is not concluded within 1 year after its commencement, Section 551 requires liquidator to submit statement in prescribed format within 2 months from close of year to ROC. This statement should be audited by chartered account.

Question 5(b)

Referring to the provisions of the Banking Regulation Act, 1949, examine the validity of the following:

(i) **Accounts and balance sheet along with auditor's report has been filed with Reserve Bank of India after nine months from the end of the period to which these relate.**

(ii) **Trinity bank Limited acquired a building loan from ABC College in discharging a term loan advanced. The building had been mortgaged as security with the bank and the college had filed to repay the loan. The bank proposes to retain the building with it and let out on commercial basis to shops. (8 Marks)**

Answer 5(b)

Analysis: Ordinary question from banking regulation act. You can attempt it if you remember time limit for submitting accounts. (ii) of 5(b) is good question. It demand application of theoretical knowledge in specific situation.

I. Every banking company should prepare accounts, balance sheet and audit report prepare and publish in prescribed manner. Three copies of same shall be submitted within 3 months from end of financial year to RBI. The RBI may extend the period not exceeding 3 months. Accordingly, filing of accounts and balance sheet along with auditor's report after nine months from end of financial year is not valid.

II. Please refer Section 9 read along with Section 6 & 8 of Banking Regulation Act, 1949.

Question 6(a)

(i) **A group of 8 individuals together with a producer institution approached the registrar for incorporation of a producer company under Section 581 of the Companies Act, 1956. Can the registrar go ahead with the registration and incorporation? Discuss. (4 Marks)**

(ii) **Explain the provisions under Companies Act, 1956 for amendment of articles of association of a producer company. (4 Marks)**

Answer 6 (a)

Analysis: You can find one question on Producer Company in any corner of paper. Producer Company is very lengthy and different from other routine provisions of companies Act. Hence, many students get confused. Student should make comparison whenever there is chances of confusion. You can't omit producer company even if you preparing for May-15 examination. Producer company may not be successful but it may help you to produce good mark.

I. As per Section 581C of Companies Act, 1956, Producer Company can be registered with minimum number of members:

- ✓ ten or more individuals, each of them must be a producer; or
- ✓ two or more producer institutions; or
- ✓ Ten or more individuals and producer companies.

If above conditions are satisfied, ROC shall register the MOA, AOA within 30 days from filing, if he is satisfied that all requirement of Act with respect to registration have been complied with and issue certificate of incorporation. But here, application for incorporation is made by 8 individuals and one producer institution. It should be made by at least 10 individuals and producer institution.

II. Provision of companies Act, regarding amendment to articles does not apply to Producer Company. Articles of Producer Company can be amended by either not less than 1/3rd of the elected directors or members and adopted by members by a special resolution. Alteration of article of association shall not against provisions of Act.

Question no. 6 (b)
In what ways does the Companies Act, 2013 restrict the non-cash transactions involving directors of public limited company? Explain. (8 Marks)

Answer 6 (b)

Analysis: Question from new companies Act. It demand writing theory as far as possible in technical language. Most of students are not good in language. So attempting this question may not result into full marks.
Please refer Section 192 of Companies Act.

Question 7 Attempt any four
Question 7(a)

(i) Mr. P has won a big lottery and wants to remit US $ 20,000 out of his winning to his son who is in USA. Advise whether such remittance is possible under FEMA, 1999.

(ii) Mr. Z is unwell and would like to have kidney transplant done in USA. He would like to know the formalities required and amount that can be drawn as foreign exchange for medical treatment abroad (4 Marks)

Answer 7 (a)

Analysis: Very easy questions from FEMA. No comment.

I. Remittance out of lottery winnings is prohibited current account transaction. Hence Mr. P cannot remit any amount out of his winning to any one out of India. Remittance is not allowed under FEMA.

II. For medical treatment abroad remittance requires prior permission of RBI only when the expenditure in foreign currency exceeds the estimate of hospital or doctor abroad or estimate from doctor in India in that field of treatment. Therefore, Mr. Z can draw foreign exchange up to the estimate of hospital or doctor abroad or estimate from doctor in India in that field of treatment and prior permission of RBI is required only if his drawl exceeds such estimate.

Question 7(b)
X a member of the competition commission of India was removed by the central government on the grounds that he had acquired financial interest likely to affect prejudicially his functions as a member. X challenged his removal by the central government claiming that the central government had no authority to pass orders for removal. Clarify whether X's contention is right as per the provisions under the Competition Act, 2002. (4 Marks)

Answer 7(b)

Analysis: Routine question. Such type of questions had been asked in past. I donot understand why examiner focus unnecessarily on appointment and removal of CCI member. In fact, there are other core areas to be touched upon.

Central Government is empowered to remove a member of CCI, if member has acquired financial interest and it is likely to affect prejudicially his functions as a Member of the Competition Commission. (Section 11)

Central Government should make reference to Supreme Court, whenever, it forms an opinion that member has acquired financial interest in any enterprises. The Supreme Court shall hold an enquiry in accordance with the procedure formulated by it and then report that the member in question ought to be removed from his office.

Thus, the Central Government can remove a member of Competition Commission from his office by following the above procedure. In the given case, central government had no authority to remove member from Commission without referring matter to Supreme Court. Contention of X is right.

Question 7 (c)
Explaining the meaning of the terms "insider trading" and "price sensitive information", state the manner in which the Companies Act, 2013 prohibits the above. (4 Marks)

Answer 7 (c)

Analysis: Very good drafting of question as it ask for insider trading and price sensitive information. Most of students was not much aware about section 195 of New Act. Usually question on companies act is not observed in question no. 7.

Insider trading is defined as a malpractice wherein trade of a company's securities is undertaken by people who by virtue of their work have access to the otherwise non public price sensitive information which can be crucial for making investment decisions.

Price sensitive information means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company. The following shall be deemed to be price sensitive information:-

- ✓ periodical financial results of the company;
- ✓ intended declaration of dividends (both interim and final);
- ✓ issue of securities or buy-back of securities;
- ✓ any major expansion plans or execution of new projects;
- ✓ amalgamation, mergers or takeovers;
- ✓ disposal of the whole or substantial part of the undertaking;
- ✓ any significant changes in policies, plans or operations of the company.

Section 195 of Companies Act, 2013, prohibits directors or key managerial personal of company from dealing in securities of company or counselling, procuring or communicating, directly or indirectly, about any nonpublic price sensitive information to any person. However prohibition is not applicable if director or KMP is required to communicate in ordinary course of business or profession or employment or under any law.

Question 7 (d)
Referring to the provisions of the Securitization & Construction of Financial Assets & Enforcement of security interest Act, 2002 state the circumstances under which the RBI may cancel the certificate of registration granted to Securitization Company. (4 Marks)

Answer 7 (d)

Analysis: Ordinary question from Securitizations Act. You can attempt well if you have remember all conditions in well manner.

Please refer Section 4 of Securitisation & Construction of Financial Assets & Enforcement of Security Interest Act, 2002

Before canceling of registration of SC or ARC, RBI should give an opportunity of being heard and for taking necessary steps to comply with such provisions.

Question 7 (e)
X Inc. is a company registered in UK and carrying on trading activity, with principal place of business in Chennai. Since the company did not obtain registration or make arrangement

to file return, the state VAT Officer having jurisdiction, intends to serve show cause notice on the foreign company. As standing counsel for the department, advise the VAT officer on valid service of notice. (4 Marks)

Answer 7(e)

Analysis: End of paper with quality question. It is from new Companies Act. Most of students won't be able to click or match theory point to the fact in question in terms of what is to be done by VAT officer.

Please refer Section 383 of Companies Act, 2013.

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