

MISCELLANEOUS questions on CA Final Laws

MISCELLANEOUS PROVISIONS (SECTIONS 416 – 424)

Employees' securities and provident funds (417 – 419)

Employees' securities to be deposited in post office savings bank or Scheduled Bank (Section 417)

Problem 1

M/s Flyover Constructions Ltd. has to recruit 2,000 Civil Engineers on contract basis for a period of 5 years. The company entered into an agreement with the employees that each employee will have to deposit Rs. 50,000 as security which sum will be returned on completion of 3 years of contract of service. The company wants to utilize the fund so collected in their business. Advise the company with reference to Companies Act in the matter of collection and utilization of money received from employees as security deposit. (November 2007)

Solution

Section 417 of the Companies Act, 1956 provides that

(1) any money or security deposited with a company by any of its employee in pursuance of his contract of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit.

- I. in a post office savings bank account, or
- II. in a special account to be opened by the company for the purpose in the state bank of India or in a scheduled bank, or
- III. where the company itself is a scheduled bank, in a special account to be opened by the company for the purpose either in itself or in the state bank of India or in any other scheduled bank.

(2) No portion of such moneys or securities shall be utilized by the company except for the purposes agreed to in the contracts of service.

(3) A receipt for moneys deposited with a company by its employee shall not be deemed to be security within the meaning of this section; and the moneys themselves shall accordingly be deposited as provided in sub-section (1).

So the company cannot utilize the money so collected. It will have to deposit the money in the special accounts as referred in the section.

Provisions applicable to provident funds of employees (Section 418)

Problem 2

As per the terms of the agreement of service between NOC Ltd. and its employees, an amount equal to 12.5% of the salary shall be transferred to the recognized Provident Fund and shall be payable to the employee either on retirement or termination, as the case may be. An amount equal to 12.5% of the salary shall be contributed by the company to the recognized provident fund. Mr. A earning Rs. 3000 p.m. has been working with the company since the last four years. Due to some personal reasons Mr. A is in need of Rs. 100,000 and wants to obtain as advance the amount standing to the credit in the fund. With reference to the provisions of the Companies Act, 1956. advice as regards the following:

(i) When and where should the money so collected by the company be deposited?

(ii) Can Mr. A obtain the advance from his accumulated contribution to recognized Provident Fund? (November 2008)

Solution

Section 418 of the Companies Act, 1956 dealing with the provident fund of the employees provides that:

(1) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or received or accruing by way of interest or otherwise to such fund shall, within fifteen days from the date of contribution, receipt or accrual, as the case may be either-

(a) be deposited-

- I. in a post office saving bank account, or

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- II. in a special account to be opened by the company for the purpose in the State Bank of India or in a Scheduled Bank, or
 - III. Where the company itself is a Scheduled Bank, in a special account to be opened by the company for the purpose either in itself or in the State Bank of India or in any other Scheduled Bank; or
- (b) be invested in the securities mentioned or referred to in clauses (a) to (e) of Section 20 of the Indian Trusts Act, 1882.
- (2) Notwithstanding anything to the contrary in the rules of any provident fund to which sub-section (1) applies or in any contract between a company and its employees, no employee shall be entitled to receive, in respect of such portion of the amount to be credited in such fund as is invested in accordance with the provisions of sub-section (1), interest at a rate exceeding the rate of interest yielded by such investment.
- (3) Nothing in sub-section (1) shall affect any rights of an employee under the rules of a provident fund to obtain advances from or to withdraw money standing to his credit in the fund, where the fund is a recognized provident fund.
- (i) So the money collected by NOC Ltd. from its employees will have to be deposited in any of the following:
- a) in a post office saving bank account, or
 - b) in a special account to be opened by the company for the purpose in the State Bank of India or in a Scheduled Bank, or
 - c) be invested in securities mentioned or referred to in clauses (a) to (e) of Section 20 of the Indian Trusts Act, 1882.
- (ii) As per the provision of Section 418 (3), Mr. A can obtain advances from or withdraw money standing to his credit in the fund provided the fund is a recognized provident fund.

FOREIGN COMPANIES

Problem 1

Examine with reference to the provisions of the Companies Act, 1956 whether the following companies can be treated as foreign companies:

- (i) A company incorporated outside India having a share registration office at Mumbai.
- (ii) Indian citizens incorporated a company in Singapore for the purpose of carrying on business there. (May, 2003)

Solution

“Foreign company” as per Section 591 of the Companies Act 1956, means a company incorporated outside India but having a place of business in India. Accordingly, to qualify as ‘foreign company’ a company must have both the following features:

- (a) it should be a company incorporated outside India; and
- (b) it should have a place of business in India.

As to what amount to having a place of business in India, Section 602 (e) provides that the expression ‘place of business’ includes a share transfer or share registration office.

Thus a company incorporated outside India having a share registration office at Mumbai is a foreign company.

But, the company incorporated in Singapore for the purpose of carrying on business in Singapore is not a foreign Company. Its incorporation by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India.

Problem 2

- (i) As per provisions of the Companies Act, 1956, what is the status of XYZ Ltd., a Company incorporated in London, U.K., which has a Share Transfer Office at Mumbai?

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(ii) *ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 1956. You are required to state, where the said company should deliver such documents.*

(iii) *In case, a foreign company does not deliver its documents to the Registrar of Companies as required under Section 597 of the Companies Act, 1956, state the penalty prescribed under the said Act, which can be levied. (November, 2004)*

Solution

(i) According to section 591 of the Companies Act, 1956, a company incorporated outside India and having a place of business in India is treated as a "Foreign Company". As per clause (c) of section 602 of the said Act, the expression 'place of business' includes a Share Transfer office. Thus, according to the provisions of the Companies Act, 1956, the status of XYZ Ltd. incorporated in London, U.K., which has a Share Transfer office in Mumbai, shall be that of a 'Foreign Company'.

According to section 597 of the Companies Act, 1956, any document which a foreign company is required to deliver to the Registrar of Companies shall be delivered to the Registrar having jurisdiction over New Delhi and also to the Registrar of the State in which the principal place of business of the foreign company is situate.

In light of the above provisions of the Companies Act, 1956, ABC Ltd. is required to deliver the requisite documents to the Registrar of Companies having jurisdiction over New Delhi and also to the Registrar of Companies, West Bengal.

Section 598 of the Companies Act, 1956 prescribes the penalty for non-compliance of the provisions of section 597 of the said Act. According to the provisions of the said section 598, the foreign company and its every officer or agent, who is in default, shall be punishable with a fine upto Rs.10,000/- and in case of continuing offence, additional fine upto Rs.1,000/- per day for the period during which the default continues.

Problem 3

M/s Joel Ltd. was incorporated in London with a paid up capital of 10 million pounds. Mr. Y an Indian citizen holds 25% of the paid up capital. M/s. X Ltd. a company registered in India holds 30% of the paid up capital of Joel Ltd. M/s. Joel Ltd. has recently established a share transfer office at New Delhi. The company seeks your advice as to what formalities it should observe as a foreign company under Companies Act, 1956. State briefly the requirements relating to filing of accounts with the Registrar of Companies by the foreign company in respect of its global business as well as Indian business. (November 2007)

Solution

As per section 591 companies falling under the following two classes shall be known as foreign companies namely:

(i) companies incorporated outside India which, after the commencement of this act, establish a place of business within India, and

(ii) companies incorporated outside India which have, before the commencement of this act, established a place of business within India and continue to have an established place of business within India at the commencement of this act.

(2) notwithstanding anything contained in sub-section (1), where not less than fifty percent of the paid up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside Indian and having an established place of business in India, is held by one or more citizens of Indian or by one or more bodies corporate incorporated in India, or by one or more citizens of Indian and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.

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Here as more than 50% of the paid-up capital is held by Indian citizen and Indian company M/s Joel Ltd. shall be treated as Indian company. It shall have to comply with such provision of the act as may be prescribed as if it were a company incorporated in India. Jeet Ltd. has to submit the following document with the registrar of companies with 30 days of establishment of business in India.

- (a) a certified copy of the charter, statutes, or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company; and, if the instrument is not in the English language, a certified translation thereof.
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors and secretary of the company, containing the particulars mentioned in sub-sec.(2).
- (d) the name and address or the names and addresses of the some one or more persons resident in India, authorized to accept on behalf of the company service of process and any notices or other documents required to be served on the company; and
- (e) the full address of the office of the company in India which is to be deemed its principal place of business in India.

Problem 4

Ashes Ltd is a company incorporated outside India. 50% of its preference share capital and 20% of its equity share capital is held by companies incorporated in India. It issued prospectus inviting subscriptions in India for its shares but did not state the country in which it is incorporated.

Examine

- (i) *Is the prospectus of the company valid?*
- (ii) *What is none of the shares (preference and equity) were held by Companies Incorporated in India?*
- (iii) *What other disclosures and required to be made by a Foreign Company?(November 2008)*

Solution

Section 591(2) of the Companies Act, 1956, provides that where not less than fifty per cent of the paid up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.

- (i) As 50% of the preference share capital and 20% of the equity share capital of Ashes Ltd. is held by companies incorporated in India, it shall be treated as if it were a company incorporated in India. As such it is not necessary for Ashes Ltd. to comply with the provisions relating to foreign companies. So the prospectus of the company shall be valid.
- (ii) If none of the shares (preference and equity) were held by companies incorporated in India, Ashes Ltd. would be a foreign company within the meaning of Section 591 of the Act. Section 595 of the Act provides that every foreign company shall in every prospectus inviting subscriptions in India for its shares or debentures, state the country in which the company is incorporated. As Ashes Ltd. did not mention the name of the country in which it is incorporated, the prospectus shall not be valid.
- (iii) Section 595 of the Act provides for the following additional disclosures to be made by a foreign company:
 - (a) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situated;
 - (b) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill

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heads and letter paper, and in all notices, and other official publications of the company; and

(c) If the liability of the members of the company is limited, cause notice of the fact-

- to be stated in every such prospectus as aforesaid and in all business letters, bill heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
- to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the languages or one of the language in general use in the locality in which the office or place is situated.

Problem 5

A company incorporated in Singapore has established its place of business at Chennai. State the documents which are required to be furnished on such establishment of business in India under the Companies Act, 1956 and the authorities to whom such documents are to be furnished. (CA Final, New Course, May, 2009)

Solution

Foreign Company: A foreign company has to furnish to the Registrar of Companies the following documents within 30 days of the establishment of the place of business in India (Section 592 of the Companies Act, 1956).

- (i) Certified copy of charter, statute or memorandum and articles of the company or other instruments deferring the constitution of the company. If it is not in English Language its certified translation should be submitted.
- (ii) Full address of the registered or principal office of the company.
- (iii) List of directors and Secretary giving details like present and former name and surname, his usual residential address, nationality, business occupation etc.
- (iv) The names and address of one or more persons resident in India authorized to accept on behalf of the company, service of process and any notices or other documents required to be served on the company.
- (v) The full address of the office of the company in India which is deemed to be its principal place of business in India.

The aforesaid documents shall be required to be filed at two places first with the Registrar of the state where principal place of business (Chennai) is situated i.e. Registrar of Tamil Nadu in this case and second with the Registrar of New Delhi (Section 597).

Miscellaneous

Problem 6

Considering the provisions of the Companies Act, 1956, advise a foreign company on filing of World Accounts' and the 'Indian Business Accounts' with the Registrar of Companies in India?

Solution

Filing of World Accounts and Indian Business Accounts with the Registrar of Companies:

World Accounts: Three copies of balance-sheet and profit and loss account, including documents relating to every subsidiary of the foreign company, in such form, containing such particulars and including such documents as required under the provisions of the Companies Act, 1956, are required to be filed with the Registrar of Companies. However, the Central Govt., may exempt any foreign company from this requirement by notification in the official gazette.

The World accounts shall be delivered to the Registrars within a period of 9 months from the close of the financial year of the foreign company. The Registrar at New Delhi may extend the said period by 3 months, vide Rule ISA of Companies (Central Government's) General Rules and Forms, 1957.

Indian Business Accounts: Three copies of balance-sheet and profit and loss accounts of Indian business accounts of a foreign company duly audited by a practising Chartered Accountant in India, in the form prescribed in Schedule VI (as modified in terms of Notification, dated 4-10-1957 and 6-1-1959) shall be filed with the Registrar within 9 months of the close of the financial year.

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The Registrar at New Delhi may extend this period by 3 months. The accounts shall be audited by such person and in such manner as provided in Section 226 and 227 (as modified in terms of the notifications cited above).

The aforesaid accounts have to be filed with the Principal Registrar (i.e., Registrar of Companies, New Delhi) and the concerned Registrar having jurisdiction over the principal place of business of the foreign company (Section 597).

It may be pointed out that the Indian accounts have to be drawn up in Indian rupees as per the requirements of Schedule VI.

The profit and loss account of the Indian business in respect of a foreign company which, if not incorporated under this Act would be deemed to be a private company, shall not be open for inspection by any person other than a member of the company.

Section 594 provides for the requirements of accounts of foreign company. As per this section

(1) Every foreign company shall, in every calendar year –

(a) make out a balance sheet and profit and loss account in such form containing such particulars and including or having annexed or attached thereto such documents (including, in particular documents relating to every subsidiary of the foreign company) as under the provisions of this act it would, if it had been a company within the meaning of this act, have been required to make out and lay before the company in general meeting; and

(b) deliver three copies of those documents to the registrar;

Provided that the Central Government may, by notification in the official gazette, direct that, in the case of any foreign company or class of foreign companies the requirements of clause (a) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in the notification.

(2) If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof.

(3) Every foreign company shall send to the registrar with the documents required to be delivered to him under sub-section (1), three copies of a list in the prescribed form of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in sub-section (1) is made out.

Prospectuses

Dating of prospectus and particulars to be contained therein (Section 603)

Problem 7

Under Section 603 of the Companies Act, 1956, what are particulars required for incorporating a prospectus to be issued by an existing foreign company?

Solution

Under Section 603, (Companies Act, 1956), the prospectus to be issued by an existing or intended Foreign Company in India must be dated and contain the following particulars:

- a) the instrument constituting or defining the constitution of the company;
- b) the enactment's or provisions under which the company was incorporated;
- c) the address of the place in India where the said instrument, enactments etc. translation thereof in English if they are in some other foreign language, can be inspected;
- d) the date on which and the country in which the company was incorporated; and
- e) whether there is a place of business in India and if so, the address of its principal office.

The provision contained in (a), (b) and (c) above, shall not be applicable if the prospectus is issued more than 2 years after the company had become entitled to commence business.

The prospectus of Foreign Company must contain the matters laid down in Part-I of the Schedule II and set out the report specified in Part II of the Schedule subject always to the provisions of Part-III of the Schedule.

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LEGAL PROCEEDINGS

(SECTIONS 632 – 635AA)

Power of Court to grant relief in certain cases (Section 633)

Problem 1

Gulmohar Ltd., a company registered under Indian law owns a factory' in Calcutta, wherein it manufactures jute products. By a notification of the State Government, issued during October, 2002, due to a strike and lock-out, it was declared a relief undertaking. After four months, in February, 2003, the lock-out was lifted. However, during the said period the company's directors defaulted in payment of Provident Fund (PF) and other ancillary dues. During the month of December, 2002, the Regional PF Commissioner initiated criminal proceedings against the company and its directors under the Employees PF and Miscellaneous Provisions Act, 1952, for default and delay in payment of PF dues.

Immediately the directors of the company applied to the High Court for relief under Section 633 of the Companies Act, 1956, praying for relief from liable under the PF law. 77th petition is now pending before a single judge. The company desire to know from you, as to the tenability of their claim for relief at the High Court, and as to whether they would be excused and exonerated by the High Court, in respect of the contraventions committed under the PF law.

Briefly discuss the law on the subject and state whether the petition filed by the directors would be admitted or not under the Companies Act.

Solution

The crux of the matter involved in the above case, is whether the words “any proceeding” against an officer of a company, would mean only a proceeding under the Companies Act or any Criminal proceeding under any other law. The provisions of the Companies Act, define “officer” and “officer in default” but there is no definition for the word “proceeding”. In the present case, the proceeding has not resulted from or has not been brought about as a consequence of default, refusal, contravention, non-compliance or failure under the Companies Act, 1956, but has come about as a result of certain acts and omissions committed by the directors of the company Gulmohar Ltd., under the Employees PF and Misc. Provisions Act, 1952. The Court has powers under Section 633 to grant relief only to a director/officer of a company, and not to the company. But the significance of the words “in any proceeding” employed in Section 633(1) require to be understood.

The facts of the case, bear resemblance to those which came up before their Lordships of the Supreme court in *Rabindra Chamarla and Others Vs Registrar of Companies, West Bengal and others*, 1992 (73) Comp. Cas. 257 (SC).

Going by the tenor of section 633 of the Companies Act, 1956 and the Supreme Court ruling the directors of Gulmohar Ltd., cannot avail of relief under Section 633 of the Companies Act, 1956 and their Petition is not likely to succeed. It is liable to be dismissed.