

Analysis of CA Final – Corporate & Allied Laws, November 2015 paper of ICAI

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Question 1(a)

Star Ltd. declared and paid dividend in time to all its equity holders for the financial year 2014-15, except in the following two cases:

- (i) Mrs. Sheela, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela about this discrepancy.
- (ii) Dividend amount of Rs. 50,000 was not paid to Mr. Mohan, deceased, in view of court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends. (4 Marks)

Analysis:

Question no. 1 almost consists of question on dividend. During May 2015 attempt, question on dividend was placed at question no. 1(b). This question consists of weightage of 4 marks for small two sub-questions and related to Section 127. It is my observation that section 127 is in list of favorite section of examiner. Question was easy.

Question 1(b)

You are working as the Finance Head of Super Energy Ltd. The company is in advance stage of finalising projects of wind power generation, which will considerably improve the operational and financial strengths of the company. You have got some information that one of the directors of the company, who is involved in the project, is indulged in trading of shares of the company.

Write a note for internal circulation explaining insider trading of securities and consequences of contravention of the relevant provisions of the Companies Act, 2013. (4 Marks)

Analysis:

Pure theory question. Insider trading is sensitive topic. Most of students were confused about how to write note. They were aware about provisions but not aware about drafting note. At final level, institute requires you to be good in drafting. Question also asks information about consequences for contravention. Students are able to write theory for insider trading but not able to remember effectively penalty. Students are advised that they should remember penalty of some provisions, which are important.

Question 1(c)

RPS Ltd. got its shares listed with a Stock Exchange. It has been regularly paying the listing fees. Certain information about shareholding pattern etc. was asked by the Stock Exchange, which the company could not supply in the prescribed time. It was then given a further opportunity to furnish the desired information along with supporting document, but in vain, as the company did not maintain any record. What are the penalties leviable against the company under the Securities Contracts (Regulation) Act, 1956 for the failure to furnish the information? (4 Marks)

Analysis:

Good question. Most of students were not able to understand what to write and present in answer. Again, it is question relating to penalty and dealing Section 23A of SCRA. Most of the students do not read SCRA in details.

Question 1(d)

Shareholders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture.

With reference to the provisions of the Companies Act, 2013, mention whether the shareholders' application will be accepted? Elaborate. (4 Marks)

Analysis:

It is good question in my opinion. Question is novel in terms of Companies Act, 2013. It requires through understanding of all provisions of Inspection and investigation. Many students, who read handbook and coaching class notes, omit this chapter. I think, there will be one question from this chapter in May 16 exam also.

Question 1 (e)

One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors whereby power was conferred upon them to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members') decisions. Examining the provisions of the Companies Act, 2013 answer the following:

(I) Whether the contention of members against the non-compliance of members' decision by the directors is tenable?

(II) Whether it is possible for the members usurp the powers, which by the Articles are vested in the directors by passing a resolution in the general meeting? (4 Marks)

Analysis:

Above question is very much similar with question no. 17 of practice manual, page no. 5.14 of May 2015 edition. It is good question. Those who have not referred practice manual, for them, question was trouble making. Question test knowledge on provisions of Section 179 and 180. For, four marks it is bit lengthy question.

Question 2(a)

The auditor of Organic Foods Ltd. accepted the Certificate from Mr. Rohan who is the manager, a person of knowledge, competence and high reputation, as to the value of the stock in trade. The valuation of stock referred to above was found to be grossly overstated for several years in the balance sheets of the company. As a result of the over valuation, dividends were paid out of capital. The Auditor did not examine the books of account very minutely. If they had done so and compared the amount of stock at the beginning of the year, with the purchases and sales during the year, they would have noticed the over valuation. The company subsequently went into liquidation and the auditors were sued to make good the loss caused by the wrongful payment of dividends based on the balance sheets figures. Based on the above facts, you are required to decide, with reference to the provisions of the Companies Act, 2013 and the decided case laws, the following issues:

(I) Whether the Auditors of the company will be liable for the loss caused to the company by the wrongful payment of dividends based on the Balance Sheets duly audited by the Auditors.

(II) What are the statutory duties of the Auditors in this regard? (8 Marks)

Analysis:

Question is average and copied from question no. 19 from practice manual of May 2015, page no. 2.15. Only name of company is changed. Question demands citing case law. Most of students do not remember case law or land mark judgments. Students should also keep in mind duty of auditor as per provisions of Companies Act, 2013.

Question 2(b)

Best Plastics Limited is being wound up by the Court. The Official Liquidator after realization of the assets has an amount of Rs. 28 lakhs in his hand towards payment of creditors of the company.

Details of creditors are as follows:

i.	Secured Creditors	Rs. 20 Lakhs
ii.	Workers' wages	Rs. 15 lakhs
iii.	Income Tax Payable	Rs. 2 Lakhs
iv.	Unsecured Creditors	Rs. 40 Lakhs

Since the available amount in the hands of Liquidator is only Rs. 28 lakhs, which is insufficient to meet the claims of all the above creditors, explain the procedure you would follow for payment of the above in accordance with the provisions of the Companies Act, 1956, assuming that the company has created a charge on all the assets of the company in favour of secured creditors. (4 Marks)

Analysis:

What a poor selection of question is! Institute in May 1999 examination asked same question. For students, this question is favorable and helpful as concept is routine. At least they could change some of figure or facts...

Question 2(c)

ABC Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company-Balance Sheet and Statement of Profit & Loss and the Board's Report for the year ended 31st March 2015 were authenticated by two of the directors, Mr. X and Y under their signatures. Referring to the provisions of the companies Act, 2013:

(i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.

(ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report? (4 Marks)

Analysis:

Moderate question testing conceptual clarity of students regarding authentication of financial statement. Most of students who are undergoing article ship training and have on hand experience of complete audit work of accounts of company are aware on it. Adding element of OPC here was interesting. Most of students had confusion on that aspect. Accounts and audit chapter has weightage of 10-15 marks in recent past.

Question 3(a)(i)

In the annual general meeting of XYZ Ltd, while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were levelled against him by some members. This resulted into chaos in the meeting. The situation was normal only after the chairman declared about initiating an inquiry against the director. Mr. X, however, could not be re-appointed in the meeting. The matter was published in the newspapers next day.

On the basis of such news, whether the court can take cognizance of the matter and take action against the director on its own? Justify your answer with reference to the provisions of the Companies Act, 2013. (4 Marks)

Analysis:

This question is really interesting and challenging. Most of students fail to understand that question is based on which provision. It is question-demanding application of provision of New Companies Act, 2013. Similar question was not available either in PM or any other reference book.

Question 3(a)(ii)

CB Ltd., an unlisted company, having a paid up equity share capital of Rs. 6 crore consisting of 60 lakh equity shares of Rs. 10 each, proposes to reduce the denomination of equity shares to Rs. 2 per share and make an initial public offer at a premium of Rs. 98 per share. Examine whether it is possible for the company to go ahead with these proposals under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations, 2009? (4 Marks)

Analysis:

It is very similar question based on question asked in November 2009. Here, good thing is that figure and concept is little changed. In my opinion, many student are not good in understanding and applying provisions of SEBI (ICDR) Guidelines. Many coaching class tutor's advice to omit this chapter or guide students to do selective points from SEBI Guideline. Do not take chance. Here mark weightage was only 4 marks. However, students would be in great trouble if it had been for 8 marks. From the allied laws part, SEBI & SCRA are hot topics.

Question 3(b)

Queens Limited is a company listed at Bombay Stock Exchange. Company's Articles empower the Board of Directors to appoint additional director. The Board of Directors, therefore, appoints Mr. K, as the additional, director. It may, however, be pointed out that earlier, the proposal to appoint Mr. K, as a director on the Company's Board was rejected by the members at the company's Annual General Meeting. Examining the provisions of the Companies Act, 2013, answer the following:

- (i) Whether Mr. K's appointment as additional director by the Board of Directors is valid?
- (ii) Whether the Company's Annual General Meeting can appoint Mr. K as the additional director when the proposal to appoint comes before the meeting for the first time?
- (iii) In case the AGM of the company is not held within the stipulated time, decide whether Mr. K who was appointed by the Board as additional director, for the first time, can continue to act as a director? (8 Marks)

Analysis:

Good question testing concept of additional director under new Companies Act, 2013. For eight marks, three small questions were asked while two of them were really need application of provision in given situation. As provision of additional director changed under new act, many students fail to answer correctly for second sub-question. Director is another hot and favorite topic for examiner for decade.

Question 4(a)

Elaborate the provisions of the Companies Act, 2013 regarding Notice of Board Meeting. Draft a notice for the first meeting of the Board of Directors of India Timber Ltd. (8 Marks)

Analysis:

Smash hit. Drafting question along with theory. It is for 8 marks. Many students do not know how to draft notice for First Board meeting. At the same time, many of them were confused with what items of businesses to be included in notice of first board meeting. I really appreciate drafting and selection of this question. Many students did not carefully read question, which has asked to write

provisions on notice of Board meeting too. You should read question carefully is learning lesson from this point.

Question 4(b)(A)

DJA Company Limited, incorporated under the provisions of Companies Act, 2013, has two subsidiaries - AJD Limited and AMR Limited. All the three companies have prepared their financial statements for the year ended 31st March 2015. Examining the provisions of the Companies Act, 2013, answer the following:

- (i) In what manner the subsidiaries - AJD Limited and AMR Limited shall prepare their Balance Sheet and Profit & Loss Account?
- (ii) What would be your answer in case the DJA Limited - the holding company, is not required to prepare consolidated financial statements under the Indian Accounting Standards?
- (iii) What shall be your answer in case one of the subsidiary company's financial statements does not comply with the Accounting Standards?
- (iv) To what extent is the Central Government empowered to exempt a company from preparing the financial statements in compliance with the Indian Accounting Standards? (4 Marks)

Analysis:

Good question, testing conceptual understanding of students relating to provisions of Consolidation and AS. Question has hypothetical situation designed in good way. On the part of students, to attempt this question, good amount of application skill of provisions needed. With this question, total weightage of accounts and audit chapter has gone to almost 10 marks.

Question 4(b)(B)

Mr. S, a member of MN Ltd., obtained an order from the Securities and Exchange Board of India (SEBI) against the company. But the company failed to redress the grievance of Mr. S within the time fixed. Consequently, SEBI imposed penalty on the company. The company, however, did not pay the penalty also. State how the penalty can be recovered from the company? (4 Marks)

Analysis:

Again, question from past papers. Its blast from past. Similar question was asked in November 2008. Those students who have referred past questions could attempted in well manner. This is 3rd question from bunch of SEBI-SCRA. SEBI-SCRA is important in allied laws.

Question 5

A and B were appointed as first directors on 4th April, 2014 in Sun Glass Ltd. Thereafter, C, D and E were appointed as directors on 6th July, 2014 and F, G and H were also appointed as directors on 7th August, 2014 in the company. In the Annual General meeting (AGM) of the company held after the above appointments, A and B were proposed to be retired by rotation and reappointed as directors.

At the AGM, resolution for A's retirement and reappointment was passed. However, before the resolution for 'ET could be taken up for consideration, the meeting was adjourned. In the adjourned meeting also, the said resolution could not be taken up and the meeting was ended without passing the resolution for B's retirement and reappointment.

In the light of above and with reference to relevant provisions of the Companies Act, 2013, answer the following:

- (i) Whether proposals for retirement by rotation and reappointment of A and B only were sufficient?
- (ii) What will be the status of B as a director in the company? (8 Marks)

Analysis:

Another question from director topic after question on additional director. This type of question was asked in past also from provision of Companies Act, 1956. This question requires application of provision of Companies Act 2013. Students are comfortable with provision of appointment of

director but not comfortable with deemed appointment provision. While writing this provision, majority of students are not able to write provision of deemed appointment effectively.

Question 5(b)

Robertson Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013? Explain. (4 Marks)

Analysis:

Good question, testing concept about definition of foreign Company. Students who have gone through definition in superficial manner could not understand it. Many of them were applying logic of FEMA while question clearly state about Companies Act, 2013.

Question 5(c)

(i) The mango producers in Lucknow have entered into an arrangement among them whereby they have decided not to sell the mango below certain price. This arrangement has been made in writing but not intended to be enforced by any legal proceedings. Referring to the provisions of the Competition Act, 2002, examine whether the said arrangement shall fall within the jurisdiction of the term 'agreement' within the meaning of the said Act.

(ii) The coconut producers in Tirunelveli (Tamil Nadu) have formed an association to control the production of coconuts. Referring to the provisions of the Competition Act, 2002, examine whether the said association to control the production of coconuts shall fall within the jurisdiction of the term 'Cartel' under the provisions of the said Act. (4 Marks)

Analysis:

Two small questions from competition act are testing your understanding of theory. Questions are good but they are almost similar to question no.12 of practice manual of May 2015 edition, page no. 20.10. Little modification was made to questions. It is my continuous observation that institute has been asking quality question from Competition Act. Competition Act is having good competition.

Question 6(a)

Ideal Producer Co. Ltd. was incorporated on 1st April, 2009. Its paid up capital of Rs. 10 Lakh consists of 1 lakh equity shares of Rs. 10 each held by 100 individuals. There are six directors on its Board. Referring to the provisions of the Companies Act, 1956, answer the following:

(i) What is the quorum for the Annual General Meeting?

(ii) What is the quorum for the Board Meeting?

(iii) The Board of Directors wants to co-opt one expert in the field of agronomics, as Director on its Board. Whether is it permissible?

(iv) Is it obligatory for this company to have internal audit of its accounts for Financial Year 2015-16? (8 Marks)

Analysis:

I donot understand why always at least one question from producer company. Probably India is agriculture-dominated country. Anyway, it was routine question. Student must have wrote it in very well manner. But, to attempt this question, student need to remember so many things about Producer Company and provision of producer company is quite different than provision of Companies Act. Here, comparison is best way to get rid of it.

Question 6(b)

(i) Mr. Gambler has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. He seeks your advise as to how can he be released on bail. Advise him.

(ii) What is the object of Constituting Panel for Mediation and Conciliation under the Companies Act, 2013? Who can file application for mediation and conciliation? (4 Marks)

Analysis:

Two small questions; one from Anti Money Laundering and another from Misc. topic of Companies Act, 2013. Question from money laundering focus on exception to non-bailable offence. It is one of important topic in AMLA and therefore known to most of students. While Panel for Mediation and conciliation is new concept under Companies Act, 2013 and not very well known or popular concept. Therefore, most of students could not write or represent on mediation panel effectively.

Question 7(a)

India Exports Limited engaged in the export of software products to U.S. One party in U.S. to whom the company exported certain products failed to pay the amount due for these exports resulting into non-repatriation of amount to India. The Adjudicating Authority on coming to know about this, levied a penalty on India Exports Limited under the provisions of Foreign Exchange Management Act, 1999.

The company seeks your advice as to which authority, to whom it can make an appeal against the decision of Adjudicating Authority. State also, the time limit within which the appeal can be lodged. (4 Marks)

Analysis:

Moderate question from FEMA regarding adjudication provision. Students would have never thought about asking question from adjudication provision from FEMA. Many students do selective topics from FEMA chapter. Moreover, adjudication and penalty provisions are left unread. FEMA is good area of practice too. In my opinion, question could be drafted in different way than it would become more difficult.

Question 7(b)

What do you understand by 'public interest'? Explain, giving suitable examples, about its relevance under the Companies Act, 1956. (4 Marks)

Analysis:

I would like to select this question as best question of paper. There is nothing difficult in question. But word "public interest" is not define. Hence, to write answer, student needs good understanding of many provisions of Companies Act, 1956.

Question 7(c)

Under Section 31 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, certain situations have been specified in which the provisions of this Act is not applicable. You are required to mention any four of such situations. (4 Marks)

Analysis:

It is easy question. Students who have read SARFESAI Act with reasonable effort can write it. I am of the opinion that institute should ask the same concept in practical question form.

Question 7(d)

Explain the usefulness of following terms in interpreting/construing statute:

(i) Preamble

(ii) Use of Foreign Decisions (4 Marks)

Analysis:

It is very ordinary and question repeatedly asked. Almost students left Interpretation of statute. This chapter is most important chapter to learn subject.

Question 7(e)

Bharat Insurance Company issued a policy having sum assured of Rs. 5 lakhs on the life of Ms. Nirmala. While obtaining education loan of Rs. 4 lakh for higher studies, Ms. Nirmala assigned the above insurance policy in favour of the Bank providing the loan. Who, in this case, will be called the 'Policy Holder' under the Insurance Act, 1938 and why? Explain. (4 Marks)

Analysis:

Another good question after the question of public interest. This is what I want from institute. Instead of asking definition of "policy holder", practical question on same concept is asked. Last question is perfect finish.

Note:

1) Demo lecture for CA Final – Corporate & Allied Laws for May 2016 attempt is available at following link

<http://www.caclubindia.com/coaching/224-corporate-and-allied-laws.asp>

2) Solved paper will be uploaded very soon on caclubindia.com