PAPER-4: CORPORATE AND ALLIED LAW SUGGESTED ANSWERS
CA FINAL MAY 17

Q 1 (a)

Section 138:- internal audit

a. The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors , namely :-
(1) Every listed company;
(2) Every unlisted public company having –

(A) paid up share capital of 50 crore rupees or more during the preceding financial year ; or
(B) turnover of 200 crore rupees or more during the preceding financial year ; or
(C) outstanding loans or borrowings from banks or public financial institution exceeding 100 crore rupees or more at any point of time during the preceding financial years ; or
(D) outstanding deposits of 25 crore rupees or more at any point of timing during the preceding financial year ; and

(3) every private company having –

(A) turnover of 200 crore rupees or more during the preceding financial year ; or

(B) outstanding loans or borrowings from banks or public financial institution exceeding 100 crore rupees or more at any point of time during the preceding financial years ; or

b. Internal auditor shall either be a chartered accountant or a cost accountant , or such other professional as may be decided by the board to conduct internal audit of the function and activities of the company.
c. The internal auditor may or may not be an employee of the company.

In the given case, PMK ltd. having a paid up capital of Rs. 65Cr. During the preceding financial year which exceeds Rs. 50Cr. In the light of above provision company PMK ltd. is required to appoint internal auditor.
In point (ii), company decided to give additional duties of internal auditor to Mr. Z. In light of above provision, Internal auditor may be an employee of the company. According to above provisions, company PMK ltd. can appoint Mr. Z as a internal auditor.

Q 1 (b)

The provisions relating to additional director are contained in section 161(1) of the Companies act, 2013. Applying these provisions, the given problem is answered as under ;
An additional director holds office upto the date of next annual general meeting or the last day on which the annual general meeting should have been held , whichever is earlier.

In the given case, the could not be held as scheduled. Therefore Mr. Abhi shall have to vacate his office on the last day on which the annual general meeting ought to have been held as per sec. 96 of the companies Act, 2013.
Further, As per section 96 registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting shall be held by a period not exceeding three months.
In the given case, Pioneer ltd. was required to held annual general meeting on 29th sept. 2016 but company wants to extend date up till 30th dec, 2016.
In the light of above provisions, Registrar has the power to extend the date of AGM upto 3 Months. If registrar extends the above date upto 3 Months, then Mr. Abhi would retire on after 3 months from 29th September, 2016 otherwise Mr. Abhi would retires on last date of holding annual general meeting i.e. on 29th Sept, 2016.

1(c)

According to **Section 149 (4) of Companies Act, 2013**, every listed public company shall have at least of 1/3rd of the total no. of directors as independent director.

Further as per second proviso to sec 149 (1) , at least one woman director shall be on the board of such class or classes of such companies as may be prescribed .

Rule 3 of the companies (Appointment & qualification of director) Rules, 2014 , provides that the following class of companies shall appoint at least one woman directors

i) Every listed company
ii) Every other public company having
   a. Paid share capital of 100 crores or more or
   b. Turnover of 300 crore or more

In the given case , total no of directors are 7 which include 3 independent directors and one woman director which is as per provision of companies act i.e. at least 1/3rd of 7 =2.333 i.e. 3 (rounded off) should be independent directors and at least 1 woman directors .

As on 15/03/2017, Mr. D & Mr. E vacated their office of director, now total no of directors are 5, so there should be at least 1/3rd of 5 i.e.2 should be independent directors and should be at least 1 woman director. Hence the requirement of independent director are satisfied but woman director's requirement is not satisfied.

Further for compliance of provision of companies act , company is required to fill vacancy by at least one woman director at the earliest but not later than immediately next board meeting or 3 months , whichever is later.

Q.1(d)

As per Judicial decision in **Tata engineering and locomotive company ltd. vs. the directors(research) for and on behalf of Deepak khanna & ors.** of Section 36A of competition act, 2002, A car manufacturing company not involved in unfair trade practice because the booking amount demanded by the company was quite high and close to the estimated price finally payable which would include excise duty, sales tax and transportation charges was not included in 'unfair trade practice' definition.

Q 1 (e)

Regulation 4:

No issuer shall make ,

a. Public issue of equity securities ,if the issuer or any of its promoters or directors is a willful defaulter or
b. A public issue of convertible debt instrument if,
    i) The issuer or any its promoters or directors is wiilful defaulters , or
    ii) It is default of payment of interest or repayment of principal amount in respect of debt instrument issued by it to the public , if any , for a period of more than 6 months

An issuer making a rights issue of specified securities , shall make disclosures as specified in part G of schedule VIII , in the offer document & abridged letter of offer , if the issuer or any its promoters or directors is willful defaulter.

In the above given case, Mr. M, a director of the company was categorized as willful defaulter by a bank. Hence Company can proceed to offer the securities through the right issue but it cannot offer public issue.

Q.2(a)

Section 127 of the companies act, 2013-

According to this section,

i) Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extent to 2 years,
ii) He shall also be liable for a fine which shall not be less than 1000 rupees for every day during which such default continues.
iii) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
However, the exception under which no offence shall be deemed to have been committed:
(a) Where there is a dispute regarding the right to receive the dividend.

Section 124 of Companies act, 2013-

Unpaid dividend account-

where a dividend has been declared by a company but has not been paid or clamed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the unpaid dividend account.

If any default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the unpaid dividend account of the company, it shall pay from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of 12% p.a. and the interest accruing on such amount such ensure to the benefit of the members of the company, in proportion to the amount remaining unpaid to them.

I. In the given case, Shareholders, holding in 50,000 shares due to dispute regarding title over the shares pending in court. Supreme LTD. not dispatched dividend warrant to those shareholders which is not contravention of Section 127.
II. Supreme LTD. declared dividend on 30th September, 2016, and on 30th October, it was observed that dividend warrants for Rs. 1.5 Lakhs were not encashed by the remaining shareholders. In the given case, only 30 days have been lapsed and such unpaid dividend amount is required to transfer in unpaid dividend account within next 7 days

and if above conditions is not satisfied by Supreme LTD. will lead to contravention of Section 124.

Q 2(b)

Penalty for wrongful withholding of property (Section 452 of the Companies Act, 2013): Section 452 of the Companies Act, 2013 provides for Penalty for wrongful withholding of property.

According to this section:

(i) If any officer or employee of a company—

(a) Wrongfully obtains possession of any property, including cash of the company; or

(b) Having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorized by this Act,

He shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh.

(ii) The Court trying an offence may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or

Knowingly misapplied, the benefits that have been derived from such property or cash or in default to undergo imprisonment for a term which may extend to 2 years.

In the light of above provisions, Company can recover the collected amount of Rs. 22,500/- from officer of a company.

Q 2 (c) (i)

As per **Foreign exchange management (Acquisition and transfer of immovable property outside india) Regulation, 2015,**

(1) a person resident in india may acquire immovable property outside india –

a. By way of gift or inheritance from a person referred to sub section (4) of section 6 of the act , or the act , or referred to in clause (b) of regulation 4 (acquired by a person resident in india on or before 8th july 1947 and continued to be held by him with the permission of the RBI)
b. By way of purchase out of foreign exchange held in resident foreign currency (RFC) account maintained in accordance with the foreign exchange management (Forign cuurncy accounts by a person resident in india) Regulation , 2015;
c. Jointly with a relative who is a person resident outside india , provided there is no outflow of funds from india ;

(2) A person resident in india may acquire immovable property outside india, by way of inheritance or gift from a person resident in india who has acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.
(3) A company incorporated in india having overseas offices, may acquire immovable property outside india for its business and in force at the time of such acquisition.

Explanation – for the purpose of these regulations, relatives in relation to an individual means husband, wife, brother, or sister or any lineal ascendant or descendant of that individual.

Q 2 (c) (ii)

Yes, Mr. Mittal can join with her daughter in acquiring such a flat in Australia .

Q 2 (c) (iii)

Advance payment against exports.

(1) Where an exporter receives advance payment (with or without interest), from a buyer/third party named in the export declaration made by the exporter , outside India, the exporter shall be under an obligation to ensure that—

(i) the shipment of goods is made within one year from the date of receipt of advance payment;

(ii) the rate of interest, if any, payable on the advance payment does not exceed London Inter- Bank Offered Rate (LIBOR) + 100 basis points; and

(iii) the documents covering the shipment are routed through the authorized dealer through whom the advance payment is received:

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the said period of one year, without the prior approval of the Reserve Bank.

(2) Notwithstanding anything contained in clause (i) of sub-regulation (1), an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipts of advance payment.

Q. 3(A)(a)

Definition of Managing Director:

Section 2(54) of the companies act, 2013 reads as follows:

'Managing Director' means a director who, by virtue of the articles of a Company or an agreement with the company or a resolution passed in its general meeting, or by its Board of

Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation: For the purposes of tis clause, the power to do administrative acts of a routine nature when so authorized by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management.

In the given case, since work allotted to Mr. Rao shall not deemed to be included within the substantial powers of management, Mr. Rao will not be treated as managing director of the Two Squares limited.

Procedure of Appointment of Managing Director:

Section 196(4) of Companies Act, 2013:

Subject to the provision of section 197 and Schedule V, the terms and conditions of the appointment of a managing director, whole time director or manager and the remuneration payable to him shall be-

a) Approved by the board of directors at a meeting;
b) Approved at a general meeting held immediately after the approval by the Board; and
c) Approved by the central government, in case such appointment at variance to the conditions specified in Schedule V.

As per rule 7 of the companies (appointment and remuneration of managerial personal) rules, 2014. The application of obtaining approval of the central government shall be made by the company in form no. MR.2. the application shall be made within 90 days of such appointment.

Notice of meeting to contain disclosures:

The notice of the board meeting and of the general meeting called for the purpose of approving the appointment of the managing director, whole time director or manager shall include-

a) The terms and conditions of such appointment;
b) Remuneration payable to him; and
c) Such other matters (including interest, of a director or directors in such appointment, if any).

Filing of return with the registrar:

Within 60 days of appointment of the managing director, whole time director or manager, the company shall file with the registrar a return of appointment in the prescribed form.

As per Rule 3, of the companies (Appointment and Remuneration of managerial personnel) Rules, 2014, the return of appointment shall be filed in Form no. M.R.1.

Validity of acts where appointment is not approved at a general meeting:

Section 196(5)- Subject to the provisions of this act, where an appointment of a managing director, whole time director or manager is not approved by the company at a general meeting, no prior act done by him shall be deemed to be invalid.

Q 3 (b)

According to section 448 of the Companies Act, 2013, if any person makes a statement which is false in any material particulars, knowing it to be false or omits any material facts, knowing it to be material, such person shall be liable under section 447.
As per section 447, any person who is found to be guilty under this section shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in fraud , but which may extend to 3 times the amount involved in the fraud. Provided that , where the fraud involves public interest , the term the imprisonment shall not be less than 3 years.
Hence, Mr. Z, a director of southern highway tolls private Limited shall be punishable with imprisonment and fine prescribed as aforesaid.

Q. 3(c)

Acquisition of Property: Section 6 of the Banking Regulation Act, 1949, provides a list of activities which Banking Company may engage in addition to the business of banking, wherein it is provided that among other activities the Banking Company may also engage in:

'acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may from the security or part of the security for any loans or advances or which may be connected with any such security'

As per the given question, ABC bank of india proposes to keep the building permanently with it and earn the rent from tenants.

In the light of the provision of section 6 of the BRA, 1949, and facts of the case ABC bank of india proposal to retain the building with it and letting out on commercial basis is valid.

But ABC Bank of india cannot hold the building permanently.

Q 4 (a)(i)

Section 218 Protection of employee during Investigation:

According to sec 218(1) of Companies Act 2013 , Notwithstanding anything contained in any other law for the time being in force , if – during the pendency of any proceeding against any person concerned in the conduct and mgt. of the affairs of a company under chapter XIV, such company other body corporate or person proposes –

i) To discharge or suspend any employee or
ii) To punish him whether by dismissal, removal, reduction in rank or otherwise or
iii) To change the terms of employment to his disadvantage,

The company, other body corporate or person, as the case may be, shall obtain approval of the tribunal of the action proposed against the employee and if the tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.

Sec 218 (2): If the company , other body corporate or person ,concerned does not receive within 30 days of making application under subsection (1) , the approval of the tribunal , then and only then , the company other body corporate or person concerned may proceed to take against the employee, the action proposed.

Conclusion: Company approached to tribunal on 3rd Jan, 2017 and suspension order passed by company on 15th Feb. 2017, where gap between approached date & suspension order passed by company is more than 30 days and further tribunal has no raised any objection in 30 days hence , action taken by company Damage Ltd. is valid.

Q 4 (a)(ii)

Sec. 219 of Companies Act 2013- Powers of inspector to conduct investigation into affairs of related companies etc.

If an inspector appointed u/s 210 or 212 or 213 or to investigate into the affairs of a company considers if necessary for the purpose of investigation, can also investigate the affairs of -

a) Any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company or a subsidiary company of its holding company

b) Any other body corporate whose BOD comprises nominees of the company or is accustomed to act in accordance with directors or instructions of the company or any of its directors.

Conclusion: Hence as per above provision, Action taken by inspector is valid and Further he can investigate the affairs of the holding company after approval of CG .

Q 4 (b)(i)

Rule 12 of Companies (Appointment & Qualification of directors) Rules, 2014

Every individuals who has been allotted a DIN shall , in the event of any changes in his particulars as stated in form DIR -3 , Intimate such change(s) to the CG within a period of 30 days of such changes in Form DIR -6 in the following manner , namely:

i) The applicant shall download Form DIR -6 from the portal, fill in the relevant changes, verify the form and attach duly scanned copy of the proof of the changed particulars and submit electronically.

ii) The form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice.

iii) The applicant shall submit the Form DIR -6.

Hence Surya, a Director in new Age Limited Holding DIN, are required to follow above procedure to change in particulars in his DIN.

Q 4 (b)(ii)

Section 168(2) of the Companies act, 2013 states that the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. The effectiveness of the resignation of the director is not in any way connected to its acceptance by the company or the board nor is it linked to the filing of required form with the Registrar.

However, under the Proviso to sec. 168(1), the resigning director is also required to file with the registrar a copy of his resignation and the reasons of his resignation in form DIR 11 within 30 days of the date of his resignation.

Hence, if the company has failed to failed to file the form DIR 12 as required by the companies (Appointment & Qualification of directors) Rules , 2014 , the effectiveness of his resignation will not be impacted.

Therefore, in the given case, the resignation of Vijay is valid and he will cease to be a director with effect from the date of notice.

Q 4(c)

Sohan Lal a farmer was found involved embezzlement of opium cultivated by him. State the punishment that can be awarded to him under the PMLA, 2002.

Sec.4 (Paragraph 2 of Part A of the schedule):

Sec 4 provides for the punishment for money laundering whoever commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine .but where the proceeds of crime involved in money laundering relate to any offence specified under Para 2 of part A of the schedule, the maximum punishment may extend to 10 years instead of 7 years.

Para 2 of Part A of the schedule to the PMLA 2002 covers offence under the narcotic drugs & psychotropic substances Act 1985.

Conclusion – in the above question Sohan lal involved in the embezzlement of opium cultivated, hence he will be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 10 years and shall also be liable to fine.

Q 5 (a)(i)

According to **Section 118 of Companies Act, 2013**, the Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes which, in the opinion of the chairman of the meeting,-

a) Is or could reasonably be regarded as defamatory of any person; or
b) Is irrelevant or immaterial to the proceeding; or
c) Is detrimental to the interest of the company.

In the given case Mr. X, one of the directors was made certain defamatory remarks. Company secretary also incorporate the indecent remarks of Mr. X and Chairman Wants to remove those undesirable remarks from the minutes.

Hence as per above provision Chairman has power to remove undesirable remarks from the minutes.

Q 5(a)(ii)

MINUTES OF THE 17TH BOARD MEETING OF JAI ENTERTAINMENT LTD. HELD AT ITS REGISTERED OFFICE AT B-17, INDUSTRIAL AREA, SUNCITY.

CHAIRMAN OF THE MEETING

Mr. XX, director of the company took the chair. Being requisite quorum present, the chairperson called the meeting to order.

APPOINTMENT OF MANAGING DIRECTOR

"**RESOLVED THAT** pursuant to provision of section 197, 198 and 203 read with schedule V and other applicable provisions, if any, of the Companies Act, 2013, subject to the approval of the members in the general meeting and subject to approval of the Central Government and such other consents and permission as may be necessary, and subject to modification, variation as may be approved and acceptable to the appointee, the consent of the board of directors be and is hereby accorded for the appointment of Mr. Kaabil as Managing Director of the company for a period of five years and payment of remuneration for the aforesaid period on the terms and conditions as approved by the Remuneration Committee in its meeting."

VOTE OF THANKS

There being no other business the meeting terminated with a vote of thanks to the chair.

DATE:-

(CHAIRMAN)

Q.5(b) Answer not available.

Q.5(c)

Use of words 'not withstanding'-

a) A provision may have overriding effect over-
- ✓ One or more provisions of the same act,
- ✓ The entire act, or
- ✓ Any law for the time being in force.

Example: Section 163, of Companies Act 2013, overrides entire companies act, 2013

Use of words 'without prejudice'-

The words without prejudice means 'without affecting'.

Example: Section 212 of companies act, 2013, without prejudice to the provision of section 210, Central government may require investigation to be conducted by SFIO.

Q 6(a)(i)

As per section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorized by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

From the above provision it is clear that the authority to appoint alternate director has been vested in the board of directors only and that too subject to empowerment by the Articles. Therefore, Mr. Narayan is not authorized to appoint an alternate director.

Q 6 (a) (ii)

According to Section 161(3) of Companies Act, 2013, the board may appoint any person as a director nominated by any institution in pursuance of the provision of any law for the time being in force or of any agreement or by the central government or the state government by virtue of its shareholding in a government company, subject to the articles of a company.

In the present case, on the request of bank providing financial assistance the board of directors of sakthi Limited decides to appoint on its board Mr. Ravi, as nominee director. Articles of association of the company do not confer upon the board of directors any such power and further there is no agreement between the company and the bank. Thus, the appointment of Mr. Ravi as nominee director is not valid as articles do not confer upon the board of director any such power.

Q. 6(A)(iii)

Section 173(3) of the companies act, 2013 provides for the giving of notice of every board meeting of not less than 7 days to every director of the company. There is no provision in the act laying down the contents of the notice. Hence, it may be construed that notice may be interpreted as intimation of the meeting and does not necessarily include the sending of the agenda of the meeting. However, considering the importance of board meetings and the responsibilities placed on the directors for decisions taken at the meetings, it is inevitable for them to be properly prepared and informed about the items to be discussed at the board meetings. As a matter of good secretarial practice, the notice should include full details and particulars of the business to be transacted at the board meeting.

The articles of association of the company may make it mandatory to do so in almost all cases.

In the given case, objection raised by independent directors is not valid.

Q 6 (a) (iv)

As per sec.173(2) of Companies Act , 2013,In case of meeting held through video conferencing and other audio visual means , the notice of the meeting shall be sent to all the directors in accordance with the provisions of sec 173(3) of the Act.

Further as per sec. 173(3), A board meeting of the board can be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means . if further provides for the board meeting to be held on shorter notice to transact urgent business subject to the condition that at least one independent director , if any shall be present at the meeting .

Hence Sunshine limited is required to follow above procedure to held board meeting at a shorter notice through video conferencing.

Q 6(b)

As per **Sec. 135 of companies act, 2013**, every company including its holding or subsidiary and a foreign company having its branch office or project office in india –

(1) Net worth of Rs. 500 Cr. or more or
(2) Turnover of Rs 1000 Cr. or more or
(3) A net profit of Rs 5 Cr. or more

During any financial year shall constitute a CSR committee of the board.

Every company which ceases to fulfill the above criteria of 3 consecutive FY shall not require complying with the provision contained in sec 135.

Further as per sec. 198 in calculation of average net profit , any profit arising from any overseas branch or braches of the company , whether operated as a separate company or otherwise.

The board of every company shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy.
If the company fails to spend such amount, the board shall, in its report, specify the reasons for not spending the amount.
In the given case net worth of the company is Rs. 650 crore which exceeds Rs. 500 crore.
Therefore provisions of section 135 will be applicable on Shoki Internal Ltd.
As condition of net worth satisfies there is no need of verifying condition of net profit.
Further in point (v) CSR expenses are at 1.10% of the average net profits of company made during the three preceding immediately financial years which are less than 2% of the average net profit, therefore BOD shall include reason for not spending the required amount in their report.

Q.6(c)

I. **Option in securities:**

Option in securities means a contract for the purchase or sale of a right to buy or sell or a right to buy and sell, securities in future and includes a teji, a mandi, a teji mandi, a galli, a put, a call or a put and call securities.

II. **Spot deliver contract:**

Spot delivery contract means a contract which provides for:

a) Actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties ot the contract do not reside in the same town or locality.

Transfer of the securities by the depository from the account fo a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.

Q 7(a)(i)

Answer not available.

Q 7(a)(ii)

(i) The workmen portion of the security is therefore 1/4th of the value of the security, i.e. 25,000,

[Sub-section (3) added to Section 529 by the Companies (Amendment) Act, 1985].

(ii) If he liquidators incur ` 10,000 for the preservation It is equal to the following equation:

$$= (\text{Whole of expenses} - \text{Whole of expenses}) * \frac{\text{workmen's portion}}{\text{value of the security}}$$

$$= 10{,}000 - \frac{1{,}00{,}000 * 25000}{1{,}00{,}000}$$

$$= 10{,}000 - 2{,}500$$

= 7,500. This is the amount to be borne by the secured creditors.

Q 7(b)

According to **Section 413 of companies Act 2013**, the president and every other member of the tribunal shall hold office as such for a term of 5 years from the date on which he enters upon his office, but shall be eligible of re-appointment for another term of 5 years.

A member of the tribunal shall hold office as such until he attends,-

(a) In the case of the president, the age of 67 years;
(b) In the case of any other member, the age of 65 years.
In the given case Mr. D was appointed as a technical member of NCLT on 1st July, 2012 for a period of 5 years. He will be completing 62 years on 30th June, 2017.
In light of above provision Mr. D can be a member of NCLT up to an age of 65 years only.
Therefore Mr. D can be re-appointed for only 3 years.

Q 7(C)

According to **Section 244 of the Companies Act, 2013,** a group of shareholder of DEF Limited must hold at least 10% of the issued share capital of the company or satisfy other requirement under section 244 of Companies Act, 2013. Since the group holds 20% of issue capital they are entitled to file a petition before the tribunal under section 241 of the Companies Act, 2013 by alleging that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members of the company.

However, on the basis of Ltd **Sheth Mohanlal Ganatram V. Shri Sayaji Jubilee Colton and Mills Company Ltd.**, mere illegal, invalid or irregular transaction entered into in the name of company do not constitute a ground for invoking the provision of section 241 unless it is proved that they are oppressive to any shareholder or prejudicial to the interest of the company or to the public interest.

Thus , in the present case, the petition filed by the group of shareholders will fail unless they can prove to the satisfaction the tribunal that the acts complained of in the petition are oppressive and prejudicial to the interest of the company and the public interest. And that to wind up the company would unfairly prejudice such member or members , but that otherwise those facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up.

Failure to declare dividend or payment of low dividend does not amount to oppression. (**Thomas Veddon V.J. (v) Kuttanad Robber Co. Ltd**.)

Q 7(d)

Scheme of compromise or arrangement: The scheme provides for sacrifice on the part of creditors as they have to forego 60% of the amount due to them and accept debentures for the balance amount. The scheme also provides for sacrifice by members but the nature of sacrifice has not been stated in the problem. The company is sick and therefore it can be considered as a company liable to be wound up within the meaning of section 390(a) of the Companies Act, 1956. The proposed scheme involves as a compromise or arrangement with members and creditors and it attracts **Section 391**.

While the company or any creditor or member can make application to the court/Tribunal under section 391, it is usual for the company to make an application. On such application, the court/Tribunal may order that a meeting of creditors and/or members be called and held as per directions of the court/Tribunal [**Section 391(1)**].

Company must arrange to send notice of meeting to every creditor/member containing a statement setting forth the terms of compromise or arrangement explaining its effect. Material interest of directors, M.D, or manager of the company in the scheme and the effect of scheme on their interest should be fully disclosed [**Section 393(1)(a)**]. Advertisement issued by the company must comply with the requirements of **Section 393(2)**. At the meetings convened as per directions of the court/Tribunal, majority in number representing at least ¾ in value of creditors/members present and voting (either in person or by proxy if allowed) must agree to compromise or arrangement.
Thereafter the company must present a petition to the court/Tribunal for confirmation of the compromise or arrangement. The notice of application made by the company will be served on the Central Government and the Court/Tribunal will take into consideration representation, if any made by the Central Government (**Section 394A**). The Court/Tribunal will sanction the scheme, if it is satisfied that the company has disclosed all material facts relating to the company e.g. latest financial position, auditor’s report on accounts of the company, pendency of investigation of company, etc.

Copy of Court/Tribunal order must be filed with the Registrar of Companies and then only the order will come into effect [**Section 391(3)**]. Copy of court/Tribunal order must be annexed to every Memorandum of Association issued thereafter. [**Section 391(4)**].

If the court/Tribunal sanctions the scheme, it will be binding on all members and creditors even those who were dissenting [**Section 391(2)**]. **(S.K. Gupta vs K.P. Jain A/R 1979 SC 374)**.

Q 7(e)

Measures to be taken by the bank to enforce its security interest under the SARFAESI Act, 2002:-

sub-section (4) of section 13 of SARFASI Act, 2002, provides that if the borrower fails to discharge his liability in full within the above specified period , the secured creditor may take recourse to one or more of the following measures to recover his secured debt :-

a) Take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured assets;
b) Take over the management of the secured assets of the borrower including the right to transfer by way of lease , assignment or sale for realize the secured asset;
c) Appoint any person (hereafter referred to as the manger), to manage the secured assets the possession of which has been taken over by the secured creditor.
d) Require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

Dear students, in case any mistake found or suggestions, please inform me on:

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PAPER-4: CORPORATE AND ALLIED LAW SUGGESTED ANSWERS
CA FINAL MAY 17

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