

Solved Scanner Appendix

CA Final Gr. I
(Solution of November - 2014)

Paper - 4 Corporate and Allied Laws

Chapter - 1: Accounts & Audit

2014 - Nov [1] {C} (a), (c)

- (a) As per **Sec. 139 of the Companies Act, 2013**, no Listed Company/a company belonging to such class/classes of company as may be prescribed, shall appoint/re-appoint:
- (a) An individual as auditor for more than 1 term of 5 consecutive years and
 - (b) Any audit firm as auditor for more than 2 terms of 5 consecutive years, Provided that an individual and an audit firm will not be able to be re-appointed after completion of 5 consecutive years and 10 consecutive years respectively.
 - (i) Thus, in the light of the above section, the resolution passed at the AGM, even though passed unanimously with no vote against it, shall not be valid as an individual auditor can only be appointed for a term of 5 consecutive years and cannot be re-appointed for the five years of completion of his term.
 - (ii) However, in case an audit firm messrs. R & Associates is appointed as the company's auditor, the resolution shall be valid as an audit firm can be appointed as auditor for 2 terms of 5 consecutive years.
- (c) Mr. Bhagvath has no right to carry out inspection of the books of accounts of the company despite the fact that he holds 76% of the share capital of the company. According to Section 128 of the Companies Act, 2013, the following persons have the right to carry out the inspection of the books of accounts of the company:
- (i) Directors of the company
 - (ii) Registrar of companies
 - (iii) Such Inspector as may be authorised by the Central Government in this behalf :
 - (iv) Such officers of SEBI as may be authorised by SEBI. Since Mr. A is not a director, he is not eligible to carry out the inspection.

2014 - Nov [3] (b)

- (i) As per **Sec. 135 of the Companies Act, 2013** every company having net worth of ₹ 500 crores or more or turnover of ₹ 1,000 crores or more or a net profit of ₹ 5 crores or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of 3 or more directors, out of which at least one shall be an independent director.

- (ii) The companies which do not have net worth, turnover or net profit as per (i) above are excluded from the requirements of the provisions of the Act in relation to CSR Committee.
- (iii) The Board of every company [as per (i) above] shall ensure that the company spends 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 for spending the amount earmarked for CSR policy activities. For this section, average net profit shall be calculated in accordance with provisions of Sec.198.

Chapter - 2: Dividend

2014 - Nov [1] {C} (b)

Sec.127 of the Companies Act, 2013 contains punishment for failure to distribute dividends.

Provided that no offence under this section shall be deemed to have been committed:

- (a) Where the dividend could not be paid by reason of the operation of any law.
- (b) Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him.
- (c) Where there is a dispute regarding the right to receive the dividend,
- (d) Where the dividend has been lawfully adjusted by the company against any sum due to if from the shareholder or
- (e) Where, for any other reason, the failure to pay the dividend/to post the warrant within the period under this section was not due to any default on the part of the company.
 - (i) Thus, keeping in mind the above provision it can be said that the act of directors is in violation of the provisions of the act as purchase of investment is not an exception enumerates in Sec. 127 (a to e) and the dividend was paid after 45 days and not 30 days of declaration.

Consequences: Every director of the company shall, if he is knowingly a part of the default, be punishable with imprisonment which may extend to 2 years and with a fine which shall not be less than ₹ 1,000 for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen percent p.a. during the period for which such default continues.

- (ii) As in the second case, it is provided in the Sec. 127(d) and thus such adjustment does not constitute violation of the provisions of the act.

Chapter - 3: Meetings of Directors and Related Party Transactions

2014 - Nov [2] (a), (b) (i)

- (a) (i) As per **Sec. 161(2) of the Companies Act, 2013** the board of directors of a company may, if so authorised 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 3 months from India.

Thus, Board of Directors of AJD Limited can appoint Mr. N as an alternate director, but as discussed above, there must be authorisation by the articles or by a resolution in general meeting, which is not present and thus appointment of alternate director is not valid.

- (ii) **Sec. 161(1) of Companies Act, 2013** states that the articles may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in general meeting, as an additional director at any time.

Thus, Mr. P who is not qualified to be appointed as an independent director, is also ineligible to be appointed as an alternate director of an independent director and thus, his appointment is not valid.

- (iii) **Sec. 161(3) of the Companies Act 2013** contains:

Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by Central Government or State Government by virtue of its shareholding in a Government Company.

In the present case, the articles of association do not confer any such power upon Board of Directors but does not also restrict it from doing so. Thus, the appointment of Mr. Peter as nominee director shall be valid assuming that Board is not prohibited by the articles to appoint a nominee director.

- (b) (i) The share capital & free reserves of Prince Company Limited is ₹ 60 crores (40 + 20) and the present borrowings of the company are ₹ 10 crores long term loans.

Sec. 180(c) of the Companies Act, 2013 restricts the board to borrow money, where the money to be borrowed together with the money already borrowed by the company will exceed aggregate of its paid up share capital and free reserves, apart from temporary loans obtained from the company's banker in the ordinary course of business.

As a financial advisor, I can propose the Board of Directors to borrow additional sum of ₹ 90 crores, which will be excess of paid-up share capital & free reserves, as the amount is to be borrowed from company's bankers and is thus assumed to be of temporary nature and in the ordinary course of business. If the borrowed money is not in terms of temporary nature i.e. exceeds a period of 6 months, or is not in the ordinary course of business, I will advise the company not to borrow such money without prior raising of paid-up share capital or free reserves.

2014 - Nov [6] (b)

Sec. 192 of the Companies Act, 2013 provides for restrictions on non-cash transactions involving director. Accordingly:

- (i) No company shall enter into an arrangement by which
- (a) a director of the company on its holding, subsidiary/associate company or a person connected with him acquires / is to acquire assets for consideration other than cash, from the company or,

- (b) the company acquires/is to acquire assets for consideration other than cash from such director/person so connected unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director/connected person is a director of its holding company, approval shall also be required to be obtained by passing a resolution in general meeting of holding company.

The notice for general meeting shall include particulars of arrangement along with the value of assets involved in such arrangement duly calculated by a registered valuer.

Chapter - 6: Compromise, Arrangements & Reconstructions

2014 - Nov [4] (b)

Sec. 391 & 394 A of the Companies Act, 1956 relates to Compromise & Arrangements. The scheme of restructuring / arrangement must be approved by a majority in number of creditors/ members who are present and voting. The creditors/members approving the scheme must represent 3/4th in value of creditors/members who are present and voting. The scheme should also be approved by equity and preference shareholders as well as by the court. The court examines the scheme whether it is fair and reasonable or not. Thus, the company should send a notice to its creditors as well as members and put forth a scheme of arrangement which is acceptable by them in the required proportion. After acceptance the arrangement should be disclosed to the court of jurisdiction which in turn will approve the scheme after being satisfied about its fairness.

Note: Sec. 230 and Sec. 232 of Companies Act, 2013 Corresponding to Sec. 391 and Sec. 394 A of Act 1956 is not yet notified.

Chapter - 7: Prevention of Oppression and Mismanagement

2014 - Nov [4] (a)

Sec. 173(3) of the Companies Act, 2013, provides that a meeting of board shall be called by giving not less than 7 days notice in writing to every director at his address registered with company and such notice shall be sent by hand delivery, on by post or by electronic means.

In the present case, Mr. C was not sent any notice of the Board Meeting, held between A & B and the decisions of meetings were also not sent to him for finally ratifying it. Thus, A & B have violated the provisions of Section 173(3) and thus, all the decisions taken by them in absence of C will not be held valid and C can take appropriate proceedings before court on judicial authority of competent jurisdiction. Also, C can claim that his share holdings be restored to 33% and the decisions taken in his absence be avoided. He may also able to liquidate the company and take his share from the company.

Chapter - 9: Corporate Winding Up and Dissolution

2014 - Nov [5] (a)

Duties of Official Liquidator:

- The liquidator shall conduct winding up proceedings.
- He shall perform such duties as court may impose.

- He occupies a fiduciary position and must not make any secret profit.
 - He is to mandatorily submit a preliminary report to court within 6 months of winding up order.
 - The liquidator is not bound to furnish further report and no time limit is prescribed.
- In case official liquidator does not comply with legal requirements he will have to vacate his office and to reimburse any additional remuneration received by him as directed by Central Government.

Chapter - 10: Producer Companies

2014 - Nov [6] (a)

- (i) **Under Sec. 581 of the Companies Act, 1956**, formation of a producer company and its registration is contained. As per Section 581, the application for being 'producers' include:
 - Individuals - 10 or more being 'producers' or 2 or more producer institutions or a combination of above. Since we are approaching a registrar, we must ensure that a group of 8 individuals together with atleast 2 producer institution should approach.
Thus, **Sec. 581(c) of Companies Act, 1956** is not complied with and so registrar should not go ahead with registration and incorporation as it contravenes provisions of 581(c).
- (ii) Section 581I provides that amendment of articles shall be proposed by not less than 2/3rd of elected directors or by not less than 1/3rd of members of Producing Company. The Amendments must be adopted by members by special resolution. A copy of amended articles together with the copy of special resolution, both duly certified by two directors shall be filed with registrar within 30 days.

Note: Sec. 373 of Act, 2013 corresponding to Sec. 581 of Act, 1956 is not yet notified.

Chapter - 11: Foreign Companies

2014 - Nov [7] (e)

X Inc. a company registered in UK and carrying on trading activity, with Principal Place of Business in Chennai has not obtained VAT registration. The state VAT officer having jurisdiction intends to serve show cause notice on the company. As standing counsel for department I would advice the VAT officer to continue to issue notice to the company by quoting the relevant laws requiring registration of the said foreign company & to file returns. The VAT officer is right in his contention that since the principal place of business of Foreign Company is in Chennai, it is required to register itself and file returns to the VAT authority.

Chapter - 15: Corporate Secretarial Practice

2014 - Nov [2] (b) (ii)

Certified true copy of resolution passed at meeting of BOD of MNR Company Ltd. held at registered office of company on 1st Oct. 2014 at 10 am.

Type of Meeting : Board Meeting

Type of Resolution : Simple Majority

RESOLVED THAT pursuant to provisions of Sec. 101 and other applicable provisions (including any modification 1 enactment thereof) if any of Companies Act, 2013, Mr. N be and is hereby appointed as an additional director on Board of Directors of the company who shall hold office upto date of ensuing AGM of company.

RESOLVED FURTHER THAT Mr. N be and is hereby severally authorized to do all the acts deeds and things which are necessary to appointment of aforesaid person as an additional director of the company.

Chapter - 16: SEBI Act, 1992

2014 - Nov [3] (a)

Ineligible Securities U/R 33 for computation of promoters contribution, are:

- (a) Specified securities acquired during preceding 3 years before filling of offer documents with SEBI - for consideration other than cash and revolution of assets and from bonus issue out of revaluation or reserves without accrual of cash/ ineligible securities.
- (b) Specified securities acquired during preceding one year (with exceptions) at a price lower than the price at which equity is being offered to public.
- (c) Specific securities pledged with creditors.

The minimum promoters, contribution is not applicable to listed company which is:

- Professionally managed, where there are no identifiable promoter group.
- Listed for 3 years & has dividend trade record of 3 years for rights issue.

2014 - Nov [7] (c)

Sec.195 of the Companies Act, 2013 defines insider trading as an act of subscribing buying, selling, dealing or agreeing to subscribe buy, sell on deal in any securities by key managerial personnel or any other officer of the company either as principal/agent if such director/KMP/officer is reasonably expected to have access to any non-public price-sensitive information in respect of securities of company.

Price sensitive information means any information which relates, directly/indirectly to a company and which if published is likely to materially affect the price of securities of the company.

If any person is found to be entering into insider trading, he shall be punishable with imprisonment for a term which may extend to 5 years on with a fine. Which shall not be less than 5 lakhs but which may extend to ₹ 25 crores or 3 times the amount of profit made out of insider trading, whichever is higher, or with both.

Chapter - 17: SCRA, 1956

2014 - Nov [1] {C} (d)

Section 12 of the Securities Contracts (Regulations) Act, 1956 assigns power to the Central Government to Suspend the business of a Stock Exchange.

Condition: Central Government must form an opinion that some emergency has arisen and for the purpose of meeting the emergency, it is expedient to suspend the business of Stock Exchange.

Publication: Central Government shall issue a notification in the Official Gazette that the business of Stock Exchange has been suspended. The reasons for suspension of business shall be specified in the notification published in the Official Gazette.

Terms and Conditions: The suspension of such business shall be subject to such conditions as may be specified in the notification.

The suspension of business shall be for such period not exceeding 7 days, as may be specified in the notification.

Extension of period of suspension: Central Government may extend the period of suspension from time to time by issuing a fresh notification in the Official Gazette. The extension may be ordered:

- (i) Central Government forms an opinion that such extension is required in the interest of trade/public interest and
- (ii) Central Government has given an opportunity of being heard to the governing body of Stock Exchange.

Chapter - 18: FEMA, 1999

2014 - Nov [7] (a)

Rule 3 read with Schedule I for rules on current account transactions under Foreign Exchange Management Act, 1999 provides that remittance out of income from:

- Lottery winnings or
 - Racing/riding etc. or any other hobby are transactions for which drawal of foreign exchange is prohibited. Thus, Mr. P cannot remit US Dollar 20,000 out of his winning, to his son in USA.
- (b) Mr. Z, for his medical treatment abroad can draw foreign exchange without RBI's approval by taking an estimate from:
- A doctor in India or
 - A hospital or doctor abroad.

However, if he wants to withdraw foreign exchange in excess of estimate, he has to take prior approval of RBI.

Chapter - 19: Competition Act, 2002

2014 - Nov [7] (b)

Section 11 of the Competition Act, 2002, empowers Central Government to remove chair person or any other member in a number of cases 1 of such case is that if chair person/member has acquired such financial/other interest as is likely to affect prejudicially his functions as a member. Thus, its contention is wrong as Central Government is empowered by law to remove him.

Chapter - 20: Banking Regulation Act, 1949

2014 - Nov [5] (b)

- (i) **Section 31 of the Banking Regulation Act, 1949** requires every banking company to Publish Accounts and Balance Sheet along with auditor's report in prescribed manner and 3 copies thereof shall be furnished as returns to RBI, within 3 months from the end of the period to which they refer. Even RBI can extend the period of 3 months for furnishing of such returns by a further period not exceeding 3 months. Thus, there has been a considerable delay in filing of Accounts and Balance Sheet as compared to the requirements of the Act. Thus, the Accounts and Balance Sheet along with auditor's report which is filed after 9 months from end of period to which these relates is a violation of Sec. 31, and hence is not valid.
- (ii) **Section 9 of the Banking Regulation Act, 1949** requires every banking company to hold Non-Banking Assets for 7 years and not more. Extension may be given by RBI for maximum 5 years. If property is held for own use condition for 7 years or extension of 5 years is not applicable. However, here Trinity Bank Ltd. does not want the building for own use but for commercial purpose which is not a valid exception to this section and true maximum period of holding such asset is 7 years.

Chapter - 22: SRFAESI Act, 2002

2014 - Nov [7] (d)

RBI may cancel a certificate of registration granted to a securitisation company or a reconstruction company, if such company:

- (a) **ceases to** carry on the business of securitisation/reconstruction of assets or
- (b) **ceases to** receive/hold any investment from a qualified institutional buyer or
- (c) **has failed** to comply with any conditions subject to which the certificate of registration has been granted to it or
- (d) **fails to:** comply with any direction issued by RBI under provisions of this Act, or maintains accounts in accordance with requirements of law or any direction or order issued by RBI under provisions of this Act, or submit/offer for inspection its books of account/other relevant documents when so demanded by RBI.

Provided that an opportunity of being heard should be provided in certain cases.

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