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CA FINAL MAY'19

SUBJECT- LAW

Test Code – FNJ 7184

BRANCH - () (Date :)

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Answer 1:

1. (c)
2. (d)
3. (b)
4. (a)
5. (d)
6. (a)
7. (c)
8. (c)
9. (c)
10. (c)
11. (b)
12. (d)
13. (a)
14. (c)
15. (d)
16. (a)
17. (c)
18. (a)
19. (d)
20. (b)
21. (c)
22. (c)
23. (c)
24. (b)
25. (a)
26. (c)
27. (d)
28. (a)
29. (a)
30. (c)

Answer 2:
(A)

Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary cause of business or under any law, or

(iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a **penalty of more than Rupees ten lakhs which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.** As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. P. Mehra. The maximum penalty that SEBI can impose is Rupees twenty-

five crores or three times the amount of profits made out of insider trading, whichever is higher. **(5 marks)**

(B)

Valuation by Registered Valuers (Section 247): According to the provisions of section 247 of the Companies Act, 2013 read with the *Companies (Registered Valuers and Valuation) Rules, 2017*, where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, **it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.**

Hence, in the given instance, proposal for appointment of Mr. Mehta as the valuer by the Board of directors of APCO Ltd. is against the said provision. In fact, valuer shall be appointed by the audit committee or in its absence by the Board of Directors of that company.

In view of above, the opinion of the Audit Committee is correct. **(5 marks)**

Answer 3:

(A) The given problem relates to section 411 and section 409 of the Companies Act, 2013, as discussed below:

1. As per section 409, a person may be appointed as a Technical Member of the Tribunal if he satisfies any of the six eligibility criteria contained in section 409. Out of these six eligibility criteria, **one criterion is "where he is, or has been, in practice as a chartered accountant for at least 15 years".**
2. As per section 411, a person may be appointed as a technical Member of the Appellate Tribunal only if he is a person of proven ability, integrity and standing and has special knowledge and professional experience of not less than 25 years in industrial finance, industrial management, industrial reconstruction, investment and accountancy.
3. In the given case, Mr. RG is a practicing chartered accountant having professional experience of 15 years.

Conclusions

4. **Mr. RG is not eligible for appointment as a Technical Member** of National Company Law Appellate Tribunal, since his professional experience is less than 25 years.
5. Mr. RG is eligible for appointment as a technical Member of National Company Law Tribunal, since he is in practice as a chartered accountant for 15 years. **(6 Marks)**

(B) The given problem relates to section 11 of the Foreign Contribution (Regulation) Act, 2010. As per section 11, **a person having a definite cultural, economic, educational, religious or social programme shall not accept foreign contribution unless such person** –

(a) obtains a certificate of registration from the Central Government ; or
(b) Obtains the prior permission of the Central Government.

In the given case, Sarva Kalyan Morcha is an organization pursuing a definite social programme, and so the provisions of section 11 are applicable to it. Accordingly, Sarva Kalyan Morcha can accept foreign contribution of $ 5,000 from a charitable trust in Canada only after obtaining –

(a) A certificate of registration from the Central Government ; or
(b) The prior permission of the Central Government. **(4 Marks)**

(C) The given problem relates to section 34 of the Arbitration and Conciliation Act, 1996.
Section 34 Contains the ground on the basis of which an arbitral award can be challenged in the Court and then, **the Court is empowered to pass an order setting aside the arbitral award.**
One of the grounds contained in **section 34** is : "**Where the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case.**"
In the given case, Anil has challenged the arbitral award on the ground that he was not given proper notice of the arbitral proceedings. This ground, as explained above, is one of the grounds on which an arbitral award can be challenged in the Court.

The questions asked in the given problem are answered as under:

(i) Anil will succeed in his prayer since he has challenged the arbitral award on such ground as is covered under section 34.
(ii) As per section 34, an application for setting aside the arbitral award may be made by a party within 3 months from the date such party had received the arbitral award.

In the given case, Anil has made the application within 15 days of receipt of the arbitral award. Thus, Anil has made the application well in time. Accordingly, the application made by Anil is not time – barred. In other words, the law of limitation shall not be a bar in his case. **(5 marks)**

(D)

(i) There is no provision in the Companies Act, 2013 under which the **board meetings** must be **held at any particular place**. Therefore, there is **no difficulty in holding the board meeting at Delhi** even if all the directors of the company reside at Maharashtra and the registered office is situated at Maharashtra provided that the requirements regarding the holding of a valid board meeting and the other provisions relating to the signing of register of contracts, taking roll calls, etc. are complied with. **(2 marks)**

(ii) Section 173 (3) of the Companies Act, 2013 provides for the giving of notice of every board meeting of **not less than seven 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.

The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period as a matter of good secretarial practice.

The articles of association of the company may make it mandatory to do so in almost all cases. **(3 marks)**

Answer 4:

(A)

(i) **Option in securities:** As per section 2(d) of the Securities Contract (Regulation) Act, 1956, option 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 a call in securities. Options are contracts, through which a **seller giver the buyer, a right, but not the obligation**, to buy or sell a specified number of shares at a pre-determined price, within a set time period. These contracts are essentially derivatives, since they derive their value from an underlying security on which the option is based. With options, one can tailor his position according to his own situation and stock market outlook.

(ii) **Derivative:** As per Section 2(ac) of the Securities Contract (Regulation) Act, 1956, derivatives include –

(I) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or **contract for difference or any other form if security**;

(II) **a contract which derives its value from the prices, or index of prices, of underlying securities.**

(III) Commodity derivatives;

(iv) Such other instruments as may be declared by the Central Government to be derivatives"

(B) The given problem relates to clause (26) of section 2 and section 285 of the Companies Act, 2013.

The legal position

1. The term 'contributory' has been defined under clause (26) of section 2, as follows : 'Contributory' means a person liable to contribute towards the assets of the company in the event of its being wound up.
   A person holding fully paid – up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory.

2. As per section 285, a person, who is not a member, but has been a member in the past (viz. a past member), shall also be liable to contribute to the assets of the company, subject to the following conditions :
   (a) A past member shall not be liable to contribute if he has ceased to be a member for 1 year or more before the commencement of the winding up.
   (b) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member.
   (c) A past member shall not be liable to contribute unless it appears to the Tribunal that the present members are unable to satisfy the contributions required to be made by them. Thus, the liability of a past member is secondary.
   (d) In the case of a company limited by shares, the past member shall not be liable to contribute any amount exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member.

The given case and analysis of the case

1. Mr. A ceased to be a member of ITK Limited with effect from 1st June, 2017.
2. The winding up of ITK commenced on 15th March, 2018.
3. AS on the date of commencement of winding up, one year has not elapsed since Mr. A ceased to be a member, and therefore, he shall be liable as a past member.

Conclusions

1. As per clause (26) of section 2, Mr. A shall be termed as a contributory, since a sum of Rs. 5,000 is due and remains unpaid on the shares previously held by him and so he is liable to contribute to the assets of the company in the event of winding up of the company.
2. Mr. A is liable in the capacity of a past member.
3. Limitation on liability of Mr. A :
   As per section 285, Mr. A shall not be liable to contribute –
   (a) In respect of any debt or liability of the company contracted after he ceased to be a member;
   (b) Unless it appears to the Tribunal that the present members are unable to satisfy the contributions required to be made by them;
   (c) Anything more than the amount remaining unpaid on the shares held by him, i.e. Rs. 5,000, being the unpaid calls on shares previously held by him. **(6 marks)**

(C) As per clause (42) of section 2 of the Companies Act, 2013, 'foreign company' means any company or body corporate incorporated outside India which –

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode ; and

(b) Conducts any business activity in India in any other manner.

Clause (c) of Sub – Rule (1) of Rule 2 of the Companies (Registration of Foreign Companies) Rules, 2014 defines 'electronic mode'. As per the said clause, **electronic mode includes providing online services such as telemarketing.**

In the given case, Robertson Ltd. is carrying on online business through telemarketing in India. As per rule 2(1) (c), Robertson Ltd. has a place of business in India**. Since Robertson Ltd. is a company incorporated outside India and also it has a place of business in India, it is a foreign company.** **(4 marks)**

(D)

As per Section 5(7) of the Insolvency and Bankruptcy Code, 2016**, financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.**

Whereas the term Financial debt defined under Section 5(8) means a **debt along with interest**, if any, which is disbursed against the consideration for the time value of money and includes any amount raised pursuant to the issue of bonds, notes, debentures, loan stock or any similar instrument.

As per the facts, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' issued by the Asset Ltd. With the debenture payable, as on the maturity date with interest, it was disbursed against consideration for the time value of the money. Thus, it can be said that **debentures on maturity will come under that**

purview of Section 5(8)(c). Since Mr. Raman is a person to whom a financial debt is owed, he will come within the definition of Financial creditor. Being a debenture-holder and shareholder of the companyhe, being a creditor is entitled to claim debt amount. Therefore, as per section 7, Mr. Raman is entitled to file an application to initiate CIRP against the M/s Asset Ltd. **(6 marks)**

Answer 5:

(A) The given problem relates to section 45 of the Prevention of Money – Laundering Act, 2002. As the section 45, no person accused of an offence under this Act shall be released on bail or on his own bond unless –

(i) The public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

However, if a person is under the age of 16 years, or is a woman or is sick or is infirm or is accused either on his own or along with other co – accused of money – laundering a sum of less than Rs. 1 crore, he may be released on bail, if the special court so directs.

In the given case, Mr. Fraudulent has been arrested for a cognizable and non bailable offence punishable for a term of imprisonment of more than 3 years. As per section 45, he may be released on bail only after an opportunity to oppose the application for his release is given to the Public Prosecutor, and if the Public Prosecutor opposes his application, the Court shall not grant the bail unless the Court is satisfied that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

However, if Mr. Fraudulent is under the age of 16 years, or is sick or is infirm or is accused either on his own or along with other co – accused of money – laundering a sum of less than Rs. 1 crore, he may be released on bail, if the special court so directs, i.e. without giving any opportunity to the Public Prosecutor to oppose the bail application. **(5 marks)**

(B)

The argument of the majority shareholders that the petition may be dismissed on the ground of non-maintability is not correct. The proceedings shall continue irrespective of withdrawal of consent by some petitioners. It has been held by the Supreme Court in *Rajmundhry Electric Corporation vs. V. Nageswar Rao, AIR (1956) SC 213* that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition. Thus, **the validity of the petition must be judged on the facts as they were at the time of presentation**. Neither the right of the applicants to proceed with the petition nor the jurisdiction of Tribunal to dispose it of on its merits can be affected by events happening subsequent to the presentation of the petition.

(C)

(i) According to Regulations on Acquisition and Transfer of Immovable Property outside India, a person resident in India may acquire immovable property outside India, jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

In the instant case, Mr. Bharat wants to remit money to meet his obligation of 50% in the immovable property in USA under joint ownership with his son Arjun. Hence, as per the regulations, Mr. Bharat cannot remit amount to buy immovable

property in USA.

(4 Marks)

(ii) Period for surrender of received/ realised/ unspent/ unused foreign exchange by Resident individuals [Regulation 5 of *Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015]*: A Person being an individual resident in India shall surrender the received/realised/unspent/ unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be. Retention of unused foreign exchange by Mr. Raghav is against the Law. **(4 marks)**

(D)

The given problem relates to section 232 of the Companies Act, 2013.

1. As per section 232, an application may be made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement, and it may be shown to the Tribunal –
   (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction or merger or amalgamation ; and
   (b) That under the scheme, -
      (i) The whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company); or
      (ii) The whole or any part of the undertaking, property or liability of any company (hereinafter referred to as the transferor company) is proposed to be divided among and transferred to two or more companies.
2. The issue raised in the given problem is same as the issue raised before the Supreme Court in Hindustan Lever Employees Union v Hindustan Lever Ltd. The detailed facts and the decision of this case are as under :
   (a) A scheme of amalgamation provided for transfer of all assets, properties, undertaking and liabilities of the transferor company (viz. TOMCO) to the transferee company (viz. HLL). However, there were 3 properties which were not to be transferred to HLL under the scheme. The scheme of amalgamation was objected on various grounds including the ground that the scheme was malafide since these properties were excluded from the assets to be transferred to the transferee company.
   (b) It was held by the Supreme Court that these 3 properties were being used by TOMCO purely under a gratuitous licence with no enforceable rights. TOMCO had a mere gratuitous permission to hold such properties and TOMCO had no right, power, authority or privilege over such properties. The owner of such properties could, at any time revoke the 'permission to use' given to TOMCO. If the owner of these properties chose to get back the possession of these properties, they could do so without any difficulty by merely revoking the gratuitous licence. TOMCO had no right to transfer such properties as such properties were not the assets of TOMCO. These properties were not included in the balance sheet of TOMCO. Thus, there were no malafides in excluding these properties.

3. The facts in the given problem are similar to the facts in Hindustan Lever Employees' Union v Hindustan Lever Ltd. Applying the decision given by the Supreme Court in Hindustan Lever Employees' Union v Hindustan Lever Ltd. to the given problem, it can be said that the transferor company is justified in excluding the assets held by it on lease and licence arrangement, from those transferred to the transferee company.

(7 Marks)

Answer 6:

(A)

(i) As per the stated facts, Rudraksh Ltd. is an inactive company as per the provision given under the Companies Act, 2013. According to the section 455 of the Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company (which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;) may make an application to the Registrar for obtaining the status of a dormant company. Since in the given case, Rudraksh Ltd. has not filed financial statements or annual returns for 2 financial years consecutively, the Registrar shall issue a notice to that effect and enter the name in the register maintained for dormant companies. **(4 marks)**

(ii) As per section 149(6) read with Rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*, the public companies of prescribed class shall require to appoint minimum 2 Independent directors. However, vide Notification number G.S.R. 839(E) dated 5th July, 2017, an amendment was issued through the *Companies (Appointment and Qualification of Directors) Amendment Rules, 2017* inter-alia amending rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014.* It is provided that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors. So, the proposal for appointment of Independent Director (Mr. Ram & Mr. Rahim) is not necessitated. **(4 marks)**

(B)

Cancellation of Certificate of Registration under SARFAESI Act, 2002:

The **Reserve Bank of India** may cancel a certificate of registration granted to a securitisation and reconstruction company for the reasons stated in Section 4 of SARFAESI Act, 2002.

RST Ltd., can **prefer an appeal to the Central Government** (Secretary, Ministry of Finance, Government of India) **within a period of 30 days** from the date on which order of cancellation was communicated to it. The Central Government must also give such company a reasonable opportunity of being heard before rejecting the appeal. If RST Ltd., is holding investments of qualified institutional buyers at the time of cancellation of certificate of registration, it shall be deemed to be a securitisation and reconstruction company until it repays the entire investments held by it, together with interest if any, within such period as may be specified by the Reserve Bank. **(4 marks)**

(C)

Types of Committees under SEBI (LODR) Regulations, 2015

A. Audit Committee :

Every listed entity shall constitute a qualified and independent audit committee which shall have :

(a) The audit committee shall have minimum three directors as members.

(b) Two – thirds of the members of audit committee shall be independent directors.

(c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

(d) The chairperson of the audit committee shall be an Independent Director and he shall be present at Annual general meeting to answer shareholder queries.

(e) The Company Secretary shall act as the secretary to the audit committee.

(f) The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee.

Meetings of Audit Committee :

(a) The audit committee shall meet at least four times in a year and not more than 120 days shall elapse between two meetings.

(b) The Quorum for audit committee meeting shall either be two members or one third of the members of the audit committees, whichever is greater, with at least 2 Independent directors.

(c) The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

B. Nomination and Remuneration Committee :

The Board of directors shall constitute the nomination and remuneration committee as follows :

- The committee shall comprise of at least 3 directors;
- All directors of the committee shall be Non – Executive Directors; and
- At least 50 percent of the directors shall be independent directors.
- The Chairperson of the nomination and remuneration committee shall be an independent director. The chairperson of the listed entity, whether executive or non – executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee.

C. Stakeholders Relationship Committee:

The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.

- The Chairperson of this committee shall be a Non – Executive director.
- The Board of Directors shall decide other members of this committee.

D. Risk Management Committee

- The Board of directors shall constitute a Risk Management Committee.
- The majority of members of Risk Management Committee shall consist of members of the board of directors.
- The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.

- The Board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.
- The provisions of this regulation regarding risk management committee shall be applicable to top 100 listed entities, determined on the basis of market capitalization, as at the end of the immediate previous financial year. **(2 marks x 4 = 8 marks)**