SUGGESTED SOLUTION

CA FINAL May 2017 EXAM

CORPORATE LAWS

Test Code - F N J 6 0 6 1

BRANCH - (MULTIPLE) (Date :11.12.2016)

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Answer-1 (a) :

Under section 152(6) (a) unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement ofdirectors by rotation.

(1 Mark)

In the given case, it is assumed that the 6 directors appointed at the first general meeting ofthe company constitute at least two thirds of the total number of directors.

Section 152(6)(c) further states that at every annual general meeting, one-third of such of thedirectors for the time being as are liable to retire by rotation, or if their number is neither threenor a multiple of three, then, the number nearest to one-third, shall retire from office.

(1 Mark)

Therefore, in the given case 2 directors will be liable to retire by rotation at the next AGM ofthe Company.

(1 Mark)

Section 152(6)(d) further states that the directors to retire by rotation at every annual generalmeeting shall be those who have been longest in office since their last appointment, but asbetween persons who became directors on the same day, those who are to retire shall, indefault of and subject to any agreement among themselves, be determined by lot.

(1 Mark)

In the given case, all the 6 directors were appointed on the same date. Hence, the choice ofthe 2 directors who would retire at the next AGM of the company will be made either mutuallyby these 6 directors failing which; it will be decided by lots.

It will not make any difference under the Companies Act, 2013 if the company is a non profitorganization.

(1 Mark)

Answer-1 (b) :

Inspection of Books of Accounts of the Company (Section 128 of the Companies Act, 2013)-

(1 Mark)

Mr. Bhagvath has no right to carry out an inspection of the books of accounts of the company despite the fact that he holds 76% of the equity shares of M/s RenownedCompany Ltd. According to sections 128(3) and 206 of the Companies Act, 2013,following persons have the right to carry out the inspection of the books of accounts ofthe company.

(i) Directors of the Company [Section 128(3) of the Companies Act, 2013]
(ii) Registrar of Companies [Section 206 of the Companies Act, 2013]
(iii) Such officer of Government as may be authorised by the Central Government in this behalf (Section 206 of the Companies Act, 2013).
(iv) Such officers of SEBI as may be authorised by SEBI [Section 206 read with Section 24 of the Companies Act, 2013].

(4 Marks)

Since Mr. Bhagvath does not fall in any of above mentioned categories, he is not eligible to carry out the inspection.

[Note: According to Regulation 89(ii) of the Table F of the Schedule I of the Companies Act, 2013, a member shall have right of inspecting any account or book or document ofthe company only if conferred by law or authorized by the Board or by the company ingeneral meeting]

Answer-2 (a) :

Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may bedecided by the Board, provided that the amount of such fees shall not exceed the amount asmay be prescribed. The Central Government through rules prescribed that the amount ofsitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or

the Remuneration Committeethereof which shall not exceed the sum of rupees 1 lakh per meeting of the Board orcommittee thereof. Further, the Board may decide different sitting fee payable to independentand non-independent directors other than whole-time directors.

From the above, it is clear that fee to independent directors can be increased from Rs. 30,000 toRs. 45,000 per meeting by alternation of article by passing of special resolution.

(4 Marks)

Answer-2 (b) :

Under section 181 of the Companies Act, 2013 the Board of Directors of a company is authorized to contribute to bonafide charitable and other funds. However, in case theaggregate amount of such contribution in any financial year exceeds five per cent. of itsaverage net profits for the three immediately preceding financial years, prior permission of thecompany in general meeting shall be required.

(2 Marks)

The section does not make it mandatory for the company to have a profit for making acharitable contribution in a financial year. As the amount of donation is restricted to the average of previous 3 years' profits, it is possible for a company suffering a loss to make acontribution provided it is to a bonafide charitable fund.

In the present case, even though the company has incurred a loss it can contribute to thecharitable fund only if it is a bonafide charitable fund and the amount is upto the average ofthe preceding three years' profits. In case the contribution exceeds the limit, the approval ofthe members must be taken at a general meeting of the company.

(2 Marks)

Answer-3 (a) :

(i) In terms ofsection 173(1) of the Companies Act, 2013, a company must hold a minimum number of four meetings of its Board of directors in such a manner that not more than120 days shall intervene between two consecutive meetings of the Board.

Further, the proviso to this sub-section provides that the Central Government may bynotification, direct that these provisions will not apply in relation to any class ordescription of companies or may apply subject to such exceptions, modifications orconditions as may be specified in the notification

Vide Notification G.S.R.466(E) dated 5th June 2015, section 173(1) shall apply to the company formed under section 8 of the Companies Act, 2013 only to the extent that the Board of Directors, of such companies shall hold at least one meeting within every six calendar months.

Further, as per section 174(4)of the Act, if a meeting of the Board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shallautomatically stand adjourned till the same day in the next week, at the same time andplace, or if that day is a national holiday, till the next succeeding day which is not anational holiday, at the same time and place.

It may be noted that on adjournment of a meeting, the meeting having started and not ended will not constitute a contravention of section 173(1) under which a company isrequired to hold four board meetings in a year and not more than 120 days shall elapse between two board meetings. In case of adjournment of the meeting, it shall be deemedto have been held on the date on which it was started and not on the date when theadjourned meeting was held.

Therefore, the provisions of section 173 shall not be deemed to have been contravenedmerely by reason of the fact that a meeting of the Board which had been called incompliance with the terms of that Section could not be held for want of a quorum.

As the meeting could not be held for want of quorum, it cannot be said that PQR Ltd hasviolated the provisions of section 173 of the Act.

(4 Marks)

(ii) Under section 173(3) of the Companies Act, 2013 a meeting of the Board shall be calledby giving not less than seven days' notice in writing to every director at his addressregistered with the company and such notice shall be sent by hand delivery or by post orby electronic means.

Section 173(4) further provides that every officer of the company whose duty is to givenotice under this section and who fails to do so shall be liable to a penalty of Rs. 25,000. In the given case as no notice, was served on Mr. P and Mr. Q who are the directors ofthe company,thus, under section 173(4) every officer of the company responsible for thedefault shall be punishable with fine of Rs. 25,000.

Neither the Companies Act, 2013 nor the Companies (Meetings of the Board and itsPowers) Rules, 2014 lay down any specific provision regarding the validity of a resolutionpassed by the Board of Directors in case notice was not served to all the directors asstipulated in the Act. We shall have to go by the provisions of the Act which clearlyprovide for the notice to be sent to every director failing which the resolutions passed willbe invalid. The Supreme Court, in case of Parmeshwari Prasad vs. Union of India. (1974)has held that the resolutions passed in the board meeting shall not be valid, since noticeto all the Directors was not given in writing. Notice must be given to each director inwriting. Hence, even though the directors concerned knew about the meeting, themeeting shall not be valid and resolutions passed at the meeting also shall not be valid.

(4 Marks)

Answer-3 (b) :

Section 398 of the Companies Act, 1956 provides that a requisite number of members of thecompany as laid down in section 399 may apply to Company Law Board for appropriate reliefon the ground of mismanagement of the company.

(i) Conditions Precedent: Section 398 can be invoked in either of the two circumstances:
   (a) that affairs of the company are being conducted in a manner prejudicial to the interests of the company [Section 398(1)(a)]; or
   (b) that a material change has taken place in the management or control of thecompany and as a consequence the affairs of the company may be conducted in amanner prejudicial to the public interest or in a manner prejudicial to the interests ofthe company [Section 398(1)(b)].

(2 Marks)

(ii) Considering the above, the questions as asked can be answered as under:
   (A) Continuation of directors in their office after the expiry of their term and infighting among them has been held to be the act of mismanagement. (Ranjan Dutta vs.BholaNath Paper House Ltd. (1983)).
   (B) Non-declaration of dividend when it does not lead to devaluation of shares is not anact of mismanagement. (V.J. Thomas Vettom vs. Kuttanad Rubber Co. Ltd. (1984)).

(2 Marks)

Answer-4 (a) :

Section 223 of the Companies Act, 2013 deals with Inspector's report. The followingprovisions are applicable in respect of the Inspector's report on investigation :

(i) Submission of interim report and final report [Sub section (1)]: An inspectorappointed under this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) may,and if so directed by the Central Government shall, submit interim reports to thatGovernment, and on the conclusion of the investigation, shall submit a final report to theCentral Government.

(ii) Report to be writing or printed [Sub section (2)]: Every report made under sub section(1) above, shall be in writing or printed as the Central Government may direct .

(iii) Obtaining copy or report [Sub section (3)]: A copy of the above report may beobtained by making an application in this regard to the Central Government.

(iv) Authentication of report [Sub section (4)]: The report of any inspector appointed underthis Chapter shall be authenticated either—
   (a) by the seal, **if any,** of the company whose affairs have been investigated; or
   (b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible inany legal proceeding as evidence in relation to any matter contained in the report.

(v) **Exceptions:** Nothing in this section shall apply to the report referred to in section 212 ofthe Companies Act, 2013.

(5 x 1 = 5 Marks)

Answer-4 (b) :

(i) As per provisions of section 581ZJ of the Companies act 1956, any Producer Company may, upon recommendation of the Board and passing of resolution in the general meeting, issue bonus shares by capitalisation of amounts from general reserves referredto in section 581ZI in proportion to the shares held by the Members on the date of theissue of such shares.

(1 Mark)

(ii) As per Producer Companies (General Reserves) Rules, 2003issued by the Ministry ofCorporate Affairs, Ministry of Finance, Government of India on 7th August, 2003aproducer company formed and registered under section 581C ofthe Companies Act,1956, shall make investments from and out ofits general reserves in the followingmanner, namely:-

(a) in approved securities, fixed deposits, units and bonds issued by the Central orState Governments or cooperative societies or scheduled bank; or

(b) in a co-operative bank, state co-operative bank, co-operative land developmentbank or central co-operative bank; or

(c) with any other scheduled bank; or

(d) in any ofthe securities specified in section 20 of the Indian Trusts Act, 1882; or

(e) in the shares or securities of any other multi-state co-operative society or any co-operative society; or

(f) in the shares, securities or assets of a public financial institutions specified under section 4A ofthe Companies Act, 1956.

(4 Marks)

Answer-5 (a) :

Mr. X has to take the following steps to put High Value Builders Ltd. into compulsory winding up:

(i) A petition for winding up of the company is to be filed in the High Court where the registered office of the company is located under Section 439(1) (b) read with Section433(e) and (f) of the Companies Act, 1956. A copy of the petition should also be servedon the company.

(ii) The petition should be filed along with an affidavit showing sufficient ground for theappointment of a provisional liquidator till an order is passed by the High Courtappointing an official liquidator.

(iii) After obtaining the winding up order from the High Court the same should be advertisedwithin 14 days in a newspaper in English language and in the regional language of thestate where the company is registered.

(iv) A Certified copy of the winding up order passed by the court should by filed with theconcerned Registrar of Companies along with the prescribed fees within 30 days from the date of the winding up order.

(v) If the shares of the company are listed in a stock exchange, copy of the petition along with the order may be filed with the stock exchange concerned.

(vi) The winding up proceedings will be carried out by the official liquidator till dissolution of the company.

(6 x 1 = 6 Marks)

Answer-5 (b) :

The Companies Act, 2013 does not provide for the refund of any compensation paid by the company to its Managing Director, whole time director or manager. It only lays down thesituations under which no compensation is payable for loss of office and one such situation isthe commitment of fraud or breach of trust by the director.

(2 Marks)

Moreover, in Bell vs. Lever Brothers, (1932), Lever Brothers removed their managing director of a subsidiary by paying him compensation. It was afterwards discovered that during histenure of office he had been guilty of so many breaches of duty and corrupt practices that hecould have been removed without compensation. An action was then commenced to recoverback the compensation money. It was held that Bell was not bound to refund thecompensation money and to disclose any breach of his fiduciary obligation so as to give thecompany an opportunity to dismiss him.Thus, the Managing Director is not bound to refund thecompensation. Hence, the company can not succeed.

(2 Marks)