

# **GUIDELINE ANSWERS**

## **EXECUTIVE PROGRAMME**

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**GROUP 2**



**THE INSTITUTE OF  
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**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

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These answers have been written by competent persons and the Institute hope that the GUIDELINE ANSWERS will assist the students in preparing for the Institute's examinations. It is, however, to be noted that the answers are to be treated as model answers and not as exhaustive and the Institute is not in any way responsible for the correctness or otherwise of the answers compiled and published herein.

The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be updated with the applicable amendments which are as follows:

**CS Examinations**

December Session

June Session

**Applicability of Amendments to Laws**

upto 31 May of that Calender year

upto 30 November of previous Calender Year

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# CAPITAL MARKETS AND SECURITIES LAWS

## GROUP 2 PAPER 5

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-I

#### Question 1

- (a) The Old Age Regional Stock Exchange (OARSE), once a vital financial hub, had gradually lost its significance in the face of a rapidly evolving financial market. Established decades ago, OARSE initially served a broad spectrum of investors and businesses. However, with the emergence of national-level stock exchanges and technological advancements, OARSE struggled to keep pace with modern regulatory and operational standards.

During the year 2023-24, SEBI conducted a thorough review of OARSE's operations to assess its adherence to newly established regulations. The review revealed several deficiencies in OARSE's trading practices and compliance measures. When SEBI requested detailed information regarding these areas, OARSE failed to provide adequate responses, demonstrating significant lapses in its management and operational framework. As a result, SEBI decided to derecognize OARSE, effectively preventing it from functioning as a stock exchange. This decision highlighted the importance of compliance, technological adaptation, and transparency for the survival of regional exchanges in the competitive financial landscape.

With reference to the above case study, answer the following :

- (i) What will be the procedure followed by SEBI for withdrawal of recognition of OARSE ?
  - (ii) Will the contracts entered by OARSE before the date of withdrawal of recognition be valid ?
  - (iii) Who all are bound at OARSE to produce documents sought by SEBI ?
  - (iv) What are the provisions relating to the maintain and preserve books of accounts and other documents by any Recognised Stock Exchange in India ?
  - (v) Can business of any Recognised Stock Exchange be suspended ?
- (2 marks each)*
- (b) ECOM Ltd. is one of the leaders in e-commerce business. Its Board has a strength of 12 directors excluding three Nominee directors (not liable to retire by rotation) and four independent directors.

The company had completed 1st round of fund raising two years back. One of the conditions of shareholders agreement was to list the securities in near future. To tap the opportunity of growing stock market, it is planning to list on the stock exchange platform, so that, its existing Anchor investors are able to sell their holding. The Company Secretary has advised for changes in the composition of directors as per SEBI regulations.

Nirvan (non-executive director) having in depth experience, will be attaining the age of 65

years after listing. After listing, the managing director (serving as an Independent director in two listed entity and one unlisted entity) expected to receive offers for appointment of Independent director in three more listed entity.

The promoters are actively engaged in various philanthropic activities. They are promoters of "Save Tree Foundation", a section 8 company, working for the livelihood generation amongst underprivileged community. It is learnt that now a Not for Profit Organization can also raise funds through open market.

After analysing these facts, answer the following :

- (i) How many directors should be liable to retire by rotation at the annual general meeting ?
- (ii) What is an upper age limit for appointment or continue as non-executive director without any approval from shareholders ?
- (iii) What is the maximum limit of an independent directorship for a managing director of listed company ?
- (iv) What is the type of instrument under which a Not for Profit Organization can raise fund through market ?
- (v) If a director of a listed entity has vacated his office for medical reasons, please advice how his office can be filled.

### **Answer 1(a)**

- (i) Section 5 of the Securities Contracts (Regulation) Act, 1956 lays down that if the Central Government is of opinion that the recognition granted to a stock exchange should in the interest of the trade or in the public interest, be withdrawn, the Central Government may serve on the governing body of the stock exchange a written notice that the Central Government is considering the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter, the Central Government may withdraw, by notification in the Official Gazette, the recognition granted to the stock exchange.
- (ii) Section 5 of the Securities Contracts (Regulation) Act, 1956 prescribes that the withdrawal of recognition shall not affect the validity of any contract entered into or made before the date of the notification, and the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

Therefore, the contracts entered by the Old Age Regional Stock Exchange (OARSE) before the date of withdrawal of recognition will be valid.

- (iii) Where an inquiry in relation to the affairs of a recognised stock exchange or the affairs of any of its members in relation to the stock exchange has been undertaken:
  - (a) every director, manager, secretary or other officer of such stock exchange;
  - (b) every member of such stock exchange;
  - (c) if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm; and
  - (d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a), (b) and (c), whether directly or indirectly;

shall be bound to produce before the authority making the inquiry all such books of account, and other documents in his custody or power relating to or having a bearing on the subject-matter of such inquiry and also to furnish the authorities within such time as may be specified with any such statement or information relating thereto as may be required of him.

- (iv) Every recognised stock exchange and every member thereof shall maintain and preserve for not exceeding five years such books of accounts, and other documents as the Central Government, after consultation with the stock exchange concerned, may prescribe in the interest of the trade or in the public interest, and such books of account, and other documents shall be subject to inspection to all reasonable times by SEBI.
- (v) Section 12 of the Securities Contracts (Regulation) Act, 1956 states that if in the opinion of the Central Government, an emergency has arisen and for the purpose of meeting the emergency, the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, for reasons to be set out therein, direct a recognised stock exchange to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and if, in the opinion of the Central Government, the interest of the trade or the public interest requires that the period should be extended, may, by like notification extend the said period from time to time. However, where the period of suspension is to be extended beyond the first period, no notification extending the period of suspension shall be issued unless the governing body of the recognised stock exchange has been given an opportunity of being heard in the matter.

### Answer 1(b)

- (i) Section 152(6) of the Companies Act, 2013 states that 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 of directors by rotation.

Explanation: For the purposes of this sub-section, "total number of directors" shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

In the given situation, the total strength excluding three nominee directors and four independent directors is 12. Therefore, total number of directors including nominee directors and excluding independent directors is 15. Therefore,  $\frac{2}{3}$  of 15 i.e. 10 shall be liable to retire by rotation at the Annual General Meeting. Thus 10 Directors shall be liable to retire by rotation. 10 out of 12 remaining directors (as three nominee directors are not liable to retire by rotation) shall be liable retire by rotation in the ensuing AGM.

- (ii) According to the regulation 17(1A) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, no listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

In the instant case, Nirvan, non-executive director will be attaining the age of 65 years after listing, hence he can continue as such till the maximum age limit for non-executive director is 75 years.

- (iii) According to the regulation 17A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a person shall not serve as an independent director in more than seven listed entities.

Notwithstanding the above, any person who is serving as a whole-time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities. For the purpose of this regulation, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.

In view of above, the managing director can only be appointed as Independent Director in maximum of three listed companies and he is already the director in two listed companies, therefore he can accept the post of Independent Director in further one listed company.

- (iv) According to the regulation 292G of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, a Not for Profit Organization may raise funds on a Social Stock Exchange through issuance of Zero Coupon Zero Principal Instruments to eligible investors, donations through Mutual Fund schemes as specified by SEBI and any other means as specified by SEBI from time to time.
- (v) According to the regulation 17(1E) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, any vacancy in the office of a director shall be filled by the listed entity at the earliest and in any case not later than three months from the date of such vacancy. However, if any vacancy caused due to expiration of term of office of any director, the resulting vacancy shall be filled by the listed entity not later than the date such office is vacated. Provided that this shall not apply if the listed entity fulfils the requirement under regulation 17(1) without filling the vacancy.

Therefore, if Director has vacated office due to medical reasons, and the company continues to comply with requirement of Regulation 17(1) with respect to composition of Directors, then such the company is not required to fill such vacancy. Otherwise, the vacancy shall be filled in three months from the date of such vacancy.

**Attempt all parts of either Q. No. 2 or Q. No. 2A**

**Question 2**

- (a) A retail investor, Rajesh, invested in a mutual fund scheme but noticed irregularities in the fund's performance and management. Despite multiple attempts to resolve the issue with the mutual fund company, he receives no satisfactory response. Rajesh decides to approach SEBI's complaints redressal system (SCORES) for assistance. In light of this, answer the following :
- (i) How should Rajesh file a complaint with SEBI ?
  - (ii) What information does Rajesh needs to provide ?
  - (iii) What is the timeline for lodging complaint and one-time Review option ?
  - (iv) Can a complaint in SCORES be filed against a company under liquidation ? If yes, state the procedure.

(1+1+1+2=5 marks)

- (b) What are Credit Rating Agencies ? What is the minimum net worth requirement for Credit Rating Agencies ? Explain in brief the general obligations of Credit Rating Agencies.

(5 marks)

- (c) Buying a single share of any company is much riskier, as compared to buying the Exchange Traded Fund (ETF). Explain this statement, with reference to the understanding about ETF.

(5 marks)

(d) Distinguish between Currency Derivatives & Commodity Derivatives.

(5 marks)

**Answer 2(a)**

- (i) Investors who wish to lodge a Complaint on SCORES (complainant) are required to register themselves on [www.scores.gov.in](http://www.scores.gov.in) by clicking on "Register here" under the "Investor Corner".
- (ii) Rajesh while filing the registration form should give the details like Name of the investor, Permanent Account Number (PAN), contact details, email id, for effective communication and speedy redressal of the grievances.
- (iii) In order to enhance ease, speed and accuracy in the redressal of grievance, the investor may lodge the Complaint against any Entity on SCORES within a period of one year from the date of occurrence of the cause of action. If any complaint is filed on SCORES beyond the limitation period specified above, SEBI may reject such complaint. If the complainant is not satisfied with the resolution provided by the entity, the complainant may request for a review of the resolution provided by the entity within 15 calendar days from the date of the Action Taken Report.
- (iv) Any complaint against a liquidated company(ies), or company(ies) under liquidation cannot be dealt through SCORES. Therefore, no complaint can be filed against such category of company(ies) in SCORES.

**Answer 2(b)**

In terms of the SEBI (Credit Rating Agencies) Regulations, 1999, Credit Rating Agency means a body corporate which is engaged in, or proposes to be engaged in, the business of rating of securities that are listed or proposed to be listed on a stock exchange recognized by the SEBI.

Minimum net worth requirement for Credit Rating Agency is Rupees 25 crores.

General Obligations of Credit Rating Agency are as under:

1. Every credit rating agency shall abide by the Code of Conduct.
2. Every credit rating agency shall enter into a written agreement with each client whose securities it proposes to rate.
3. Every credit rating agency shall, during the lifetime of securities rated by it continuously monitor the rating of such securities.
4. Every credit rating agency shall disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases and websites, and, in the case of securities issued by listed companies, such information shall also be provided simultaneously to the concerned regional stock exchange and to all the stock exchanges where the said securities are listed.
5. Every credit rating agency shall disclose Rating Definitions and Rationale.
6. Where any information is called for by the SEBI from a credit rating agency for the purposes of the SEBI (Credit Rating Agencies) Regulations, 1999, including any report relating to its activities, the credit rating agency shall furnish such information to the SEBI.
7. Every credit rating agency shall comply with such guidelines, directives, circulars and instructions as may be issued by the SEBI from time to time.
8. Every credit rating agency shall appoint a compliance officer who shall be responsible

for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by the SEBI or the Central Government.

9. Every credit rating agency shall keep and maintain books of accounts, records and documents for a minimum period of five years.
10. All claims, differences or disputes between a credit rating agency and its client arising out of or in relation to the activities of the credit rating agency in the securities market shall be submitted to a dispute resolution mechanism that includes mediation and/or conciliation and/or arbitration, in accordance with the procedure specified by SEBI.

### **Answer 2(c)**

- An Exchange traded fund (ETF) is a security that tracks an index, commodity, bonds, or a basket of assets like an index fund and is traded in the securities market. In simple words, ETFs are funds that track indexes such as Sensex, Nifty, etc.
- When any investor buy shares/ units of an ETF, he buys shares/ units of a portfolio that tracks the performance of the index. ETFs just reflect the performance of the index they track.
- Unlike regular mutual funds, ETFs trade like a common stock on the stock exchange and the price of an ETF changes as per the trading in the market takes place.
- The trading value of an ETF depends on the net asset value of the underlying stock that it represents. ETFs, generally, have higher daily liquidity and lower fees than mutual fund schemes.

Therefore, ETF possesses Lower risk due to its diversification across various market securities rather than being limited to performance of single entity.

### **Answer 2(d)**

#### **Currency derivatives**

Currency derivatives are financial contracts between the buyer and seller involving the exchange of two currencies at a future date, and at a stipulated rate. Currency Derivative Trading is similar to Stock Futures and Options trading. However, the underlying asset are currency pairs (such as USDINR or EURINR) instead of Stocks. Currency Options and Currency Futures trading is done in the Foreign Exchange markets. Forex rates are the value of a foreign currency relative to domestic currency. The major participants of Currency Trading in India are banks, corporations, exporters and importers. Benefits of currency derivatives include:

- Diversification to investments,
- Hedging opportunities to importers & exporters, for their future payables and receivables,
- Trading opportunities because of volatility in currency,
- Transparent rates to traders as it is exchange-traded.

#### **Commodity Derivatives**

Commodity is a physical good attributable to a natural resource that is tradable and supplied without substantial differentiation by the general public. Commodities trade in physical (spot) markets and in futures and forward markets. Spot markets involve the physical transfer of goods between buyers and sellers; prices in these markets reflect current (or very near term) supply and demand conditions.

Commodity derivatives are financial instruments whose value is based on underlying commodities, such as oil, gas, metals, agricultural products and minerals. Other assets such as emissions trading

credits, freight rates and even the weather can also underlie commodity derivatives. Commodity Derivatives markets are a good source of critical information and indicator of market sentiments. Since, commodities are frequently used as input in the production of goods or services, uncertainty and volatility in commodity prices and raw materials make the business environment erratic, unpredictable and subject to unforeseeable risks.

Volatility in raw material costs affects businesses and can be significant given that commodity prices are driven by supply and demand from domestics as well as global markets. Ability to manage or mitigate risks by using suitable hedging in commodity derivative products, can positively affect business performance.

**OR (Alternative question to Q. No. 2)**

**Question 2A**

(i) Green Tech Solutions, is a Tech Start-up Company. It develops eco-friendly energy storage systems. Founded in 2022, its promoters are focused on products relating to sustainable technology to reduce carbon footprints in urban areas, seeking to revolutionize green energy. This company wishes to list on the recognised stock exchanges in IFSC. Considering these facts :

- (a) State the criteria for listing of Start-up companies on recognised stock exchanges in IFSC.
- (b) State the salient features related to Direct Listing and Minimum Subscription.

(3+2=5 marks)

(ii) You have been newly appointed SEBI consultant, for Techno AVR Ltd. This is a fintech Start-up company incorporated in 2010 under the Companies Act 1956. Their management, is seeking to list the company on the BSE SME platform. So, please advise the following :

- (a) Can Techno AVR Ltd. get listed at BSE SME Platform ?
- (b) What should be the tangible assets of Techno AVR for this listing ?
- (c) What should be post issue paid up capital of Techno AVR Ltd ?
- (d) Is it compulsory for Techno AVR Ltd. to facilitate trading of securities in demat form, or also in physical form ?
- (e) Techno AVR Ltd. has changed its promoters about ten month preceding the date of filing the listing application with the BSE. Does this have any impact its listing ?

(iii) TechGlobal Corp is a multinational technology company, it decided to acquire a significant stake in a promising Indian start-up, RecreateX Ltd, but it is a listed company with NSE. To avoid market disruption and potential price fluctuations, TechGlobal and RecreateX negotiated and entered into a bulk deal.

The transaction involves TechGlobal purchasing 50% of RecreateX's equity shares. This transaction includes, shareholding held by one of its shareholder Mr. X as 5% and another shareholder Mr. Y as 0.5% of RecreateX's total outstanding shares.

The brokering Firm, ABC Ltd. facilitated the transaction. But once the deal was completed, ABC Ltd. failed to report the details to the National Stock Exchange (NSE), where RecreateX's shares are listed. Under these scenarios, answer the following :

- (a) Is these three transactions [50% including 5% and 0.5%] constitutes a bulk deal on a stock exchange ?

(b) What is the reporting timing, when a bulk deal happens through a single trade or multiple trades ?

(c) Who is required to disclose the details of a bulk deal to the stock exchange ?

(2+2+1=5 marks)

(iv) List down the institutions recognised as Qualified Institutional Buyer under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

(5 marks)

### **Answer 2(A)(i)**

a) In terms of Regulation 50 of the International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021, the start-up fulfilling the following criteria shall be eligible to list on the recognised stock exchanges in IFSC, with or without making a public offer:

(a) The offer document of the company should be filed within a period of ten years from the date of incorporation/ registration;

(b) The annual turnover of the company for any of the financial years since incorporation/ registration should not have exceeded USD twenty million; and

(c) The company is working towards innovation, development or improvement of products or processes or services, or it is a scalable business model with a high potential of employment generation or wealth creation.

b) The salient features for the framework for listing of start-up and SME companies related to listing of Direct Listing and Minimum subscription are as follows:

#### **Direct Listing**

The start-ups and SMEs are permitted to list on the recognised stock exchanges in IFSC without public offer. This would encourage start-ups (including Fintech companies) to list in IFSC and would be a step towards developing IFSC as a hub for Fintech companies. Regulation 55 of the IFSCA (Issuance and Listing of Securities) Regulations, 2021 states that the company shall file the information document along with the prescribed fees. The lead manager(s) shall submit a due diligence certificate along with the information document. The issuer shall simultaneously file the information document with the recognised stock exchange(s).

#### **Minimum subscription**

Regulation 63 of the International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021 requires the minimum number of subscribers as 50 or as may be satisfied by the IFSC Authority and that at least 75% of the offer size should be subscribed for the offer to be successful.

### **Answer 2(A)(ii)**

(a) Techno AVR Ltd. is incorporated under the Companies Act, 1956 (now Companies Act, 2013), hence it can be listed on BSE SME Platform provided it fulfils other criteria required for SME Listing on BSE.

(b) Net Tangible Assets of Techno AVR Ltd. should be Rs 1.5 Crore in last preceding (full) financial year.

- (c) The post issue paid up capital of Techno AVR Ltd. shall not be more than Rs. 25 crores.
- (d) It is mandatory for Techno AVR Ltd. to facilitate trading of securities only in demat form and enter into an agreement with both the depositories i.e. NSDL and CDSL.
- (e) There should not be any change in the promoters of the company in preceding one year from date of filing the application to BSE for listing under SME segment. Since, defined period of one year has not yet been passed, hence Techno AVR Ltd. will not be eligible for listing.

**Answer 2(A)(iii)**

- (a) Bulk deal is a transaction, where total quantity bought or sold is more than 0.5% of the number of equity shares of a listed company on the exchange. The first transaction is 44.5% and the second one is 5%. Hence both are bulk trade. The third transaction is of 0.5% between the buyer and seller and therefore, totalling to more than 0.5% and hence qualify as bulk trade transaction.
- (b) The execution of bulk deal should be notified to the exchange immediately upon the execution of the trade order. If it happens through multiple trades, it should be notified to the exchange within one hour from the closure of the trading.
- (c) The stock broker, ABC Ltd, who facilitates the trade, is required to reveal to the stock exchange about the bulk deals on a daily basis.

**Answer 2(A)(iv)**

According to Regulation 2(1)(ss) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, followings are termed as Qualified Institutional Buyers:

1. a mutual fund, venture capital fund, Alternative Investment Fund and foreign venture capital investor registered with SEBI;
2. foreign portfolio investor other than individuals, corporate bodies and family offices;
3. a public financial institution;
4. a scheduled commercial bank;
5. a multilateral and bilateral development financial institution;
6. a state industrial development corporation;
7. an insurance company registered with the Insurance Regulatory and Development Authority of India;
8. a provident fund with minimum corpus of twenty five crore rupees;
9. a pension fund with minimum corpus of twenty five crore rupees registered with the Pension Fund Regulatory and Development Authority established under section 3(1) of the Pension Fund Regulatory and Development Authority Act, 2013;
10. National Investment Fund set up by the Government of India;
11. Insurance funds set up and managed by army, navy or air force of the Union of India;
12. Insurance funds set up and managed by the Department of Posts, India;
13. Systemically important non-banking financial companies.

## PART-II

### Question 3

- (a) Rohit is a regular investor in the market, electronically holding one thousand equity shares with special voting right shares of Growmore Ltd. He made a request for rematerialisation of his shares to the Company. Rohit also wanted to know, after how many days of rematerialisation, he can trade his shares. As the Company Secretary of Growmore Ltd, explain the meaning of rematerialisation, procedure to be followed for remat and tradability postremat.

(5 marks)

- (b) Gelwel Ltd, a Bombay Stock Exchange listed company, received a penalty order [dated 9th September 2024] from the stock exchange for default in compliances on 10th December 2024. Being the Company Secretary of Gelwel Ltd, decide the following situations :

- (i) Can Gelwel Ltd. file an appeal against the penalty order, issued by Bombay Stock Exchange, for default in compliances ?
- (ii) With whom and within what time period appeal should be filed, if applicable ?
- (iii) What is the time period, within which such appeals if filed should be disposed off ?

(2+2+1=5 marks)

- (c) Explain the guidelines issued by SEBI, for returning of the draft offer document and its resubmission relating to issue of Capital and Disclosure Requirements.

### Answer 3(a)

Rematerialisation is the process of converting securities held in electronic form in a demat account back in physical certificate form. For the purpose of rematerialisation, the client has to submit the rematerialisation request to the Depository Participant (DP) with whom he has an account. A client can rematerialise his dematerialised holdings at any point of time.

Procedure required for rematerialisation is as under:

- i. Client submits rematerialisation request form (RRF) to DP.
- ii. DP enters the request in its system which blocks the client's holding.
- iii. DP intimates to Depository and simultaneously, DP sends the RRF to the Registrar/ Issuer.
- iv. Registrar/ Issuer prints certificates and dispatch to the client.
- v. Registrar/ Issuer electronically confirms remat to Depository.
- vi. Client's account with DP debited.

The trading is permitted only in electronic form for the listed entities. Hence, the securities sent for rematerialisation cannot be traded. Therefore, Rohit will not be able to trade his securities post-remat.

### Answer 3(b)

- (i) Section 23L of the Securities Contracts (Regulation) Act, 1956 stipulates that any person aggrieved, by the order or decision of the recognised stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under or sub-section (3) of section 23-I, may prefer an appeal before Securities Appellate Tribunal (SAT).

Therefore, under this case, Gelwel Ltd. is eligible to file an appeal against the penalty order issued by Bombay Stock Exchange.

- (ii) The appeal by Gelwel Ltd. should be filed with Securities Appellate Tribunal (SAT) within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fees as may be prescribed.

As the penalty order from stock exchange was received by Gelwel Ltd. on 10<sup>th</sup> December 2024. Therefore, the appeal should be filed within 45 days from the date of receipt of order. However, the SAT may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

- (iii) Every appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

### **Answer 3(c)**

In order to ensure completeness of the offer document for investors and provide greater clarity & consistency in the disclosures and for timely processing, SEBI has issued '**Guidelines for returning of draft offer document and its resubmission**'.

The Broad guidelines for returning of the draft offer document are as under:

#### **Return of Draft Offer document**

The draft offer document / draft letter of offer filed with SEBI for public issue / rights issue of securities shall be scrutinized based on the broad guidelines specified as under and accordingly, the draft offer document shall be returned to the Issuer and the Lead Manager(s) for resubmission in accordance with the following guidelines, if-

Disclosures made in the draft offer document do not satisfy one or more of the following requirements:-

- (i) Draft offer document must be drafted in simple language with visual representation of data, so as to ensure ease of understanding of its contents.
- (ii) The information in the draft offer document is presented in a clear, concise and intelligible manner.
- (iii) The draft offer document avoids complex presentations, vague, ambiguous and imprecise explanations, complex information, repetition of disclosures and inconsistency.
- (iv) The risk factors are appropriately worded in simple, clear and unambiguous language to bring out clearly the risk to the investor, without undermining the same.

#### **Resubmission of Draft Offer Document**

- (i) While there shall be no requirement for payment of any fees on account of resubmission of draft offer document, the requirement for paying applicable fees for the changes, if any, in terms of changes specified in Schedule XVI of the ICDR Regulations for the updated offer document shall continue to apply as is applicable to issuer for updation in offer document.
- (ii) There shall be no refund of the filing fees on account of non-submission of draft offer document by the issuer after return.
- (iii) The issuer, within two days of resubmission of draft offer document with the SEBI, shall make a public announcement in the mode and manner as prescribed under ICDR Regulations, as applicable, and the issuer shall also include a disclosure that it is a resubmitted document.
- (iv) Issuer shall make written intimation to its sectoral regulator, if any, informing about the return and resubmission of the draft offer document, as applicable.

#### Question 4

(a) Differentiate between Initial Public Offer (IPO) and Further Public Offer (FPO). Which entities are not entitled to make an Initial Public Offer (IPO).

(5 marks)

(b) Zubin has been declared by a private bank PB Ltd, as a willful defaulter under SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 2011. But, he is interested to acquire shares of XYZ Ltd. Explain the meaning of the willful defaulter. He is declared as willful defaulter by the private bank, therefore discuss about any option available with Zubin to acquire shares of XYZ Ltd ?

(5 marks)

(c) ABC Ltd. is an auto component manufacturing company, incorporated under the provisions of the Companies Act, 2013. This company is listed on Bombay Stock Exchange. The paid up capital of the company is ₹ 400 crore as per the latest audited balance sheet. The company fails to comply with the various requirements set out in the listing agreement within the prescribed time period. The stock exchange orders for the compulsory delisting of the equity shares of ABC Ltd. Being the Company Secretary of ABC Ltd, you are required to advise regarding :

(i) Public notice before delisting order

(ii) Rights of public shareholders.

(2+3=5 marks)

#### Answer 4(a)

A public issue of specified securities by an issuer can be either an Initial Public Offer (IPO) or a Further Public Offer (FPO). An IPO is done by an unlisted issuer while a FPO is done by a listed issuer. As per the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, the issuer shall comply with the conditions mentioned thereunder before making an IPO or FPO of specified securities. The conditions need to be satisfied both at the time of filing the draft offer document (commonly referred to as the Draft Red Herring Prospectus) and the time of filing the final offer document (commonly referred to as the Prospectus) with the Registrar of Companies.

Under Regulation 5(1) & (2) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, following entities are not eligible to make an Initial Public Offer;

(a) If the issuer, any of its promoters, promoter group, directors, selling shareholders are debarred from accessing the capital market by the SEBI.

(b) If any of the promoters or directors of the issuer is a promoter or a director of any other company which is debarred from accessing the capital market.

(c) If the issuer or any of its promoters or directors is a willful defaulter or a fraudulent borrower.

(d) If any of the promoters or directors of the issuer is a fugitive economic offender.

(e) If there are any outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares of the issuer. This requirement shall not apply to:

- outstanding options granted to employees, whether currently an employee or not, pursuant to an employee stock option scheme in compliance with the Companies Act, 2013, the relevant Guidance Note or accounting standards, if any, issued by the

Institute of Chartered Accountants of India or pursuant to the Companies Act, 2013, in this regard;

- fully paid-up outstanding convertible securities which are required to be converted on or before the date of filing of the red herring prospectus (in case of book-built issues) or the prospectus (in case of fixed price issues), as the case may be.

#### **Answer 4(b)**

Wilful defaulter means any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes any person whose director, promoter or partner is categorized as such.

As per Regulation 6A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, no person who is a wilful defaulter shall make a public announcement of an open offer for acquiring shares or enter into any transaction that would attract the obligation to make a public announcement of an open offer for acquiring shares under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Hence, Zubin cannot make open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

However, this regulation shall not prohibit the wilful defaulter from making a competing offer in accordance with regulation 20 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 upon any other person making an open offer for acquiring shares of the target company.

Therefore, the route available with Zubin, who is declared wilful defaulter, is to make competing offer if the threshold of 25% or more in terms of regulation 3 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 is triggered.

#### **Answer 4(c)**

##### **Public notice before delisting order**

As per the provisions of Regulation 32(3) of the SEBI (Delisting of Equity Shares) Regulations, 2021, before passing an order, the recognized stock exchange shall give a notice in at least one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant recognized stock exchange is located, of the proposed delisting, giving a time period of not less than fifteen working days from the date of such notice, within which representations, if any, may be made to the recognized stock exchange by any person aggrieved by the proposed delisting and shall also display such notice on its trading systems and website.

##### **Rights of public shareholders**

As per the provisions of Regulation 33 of the SEBI (Delisting of Equity Shares) Regulations, 2021, where the equity shares of a company are compulsorily delisted by a recognized stock exchange, the recognised stock exchange shall appoint an independent valuer who shall determine the fair value of the delisted equity shares.

The recognised stock exchange shall form a Panel of expert valuers and from the said Panel, the valuer shall be appointed. The value of the delisted equity shares shall be determined by the valuer as prescribed.

The promoter of the company shall acquire the delisted equity shares from the public shareholders by paying them the value determined by the valuer, within three months of the date of delisting

from the recognised stock exchange, subject to the option of the public shareholders to retain their shares.

The promoter shall be liable to pay interest at the rate of ten percent per annum to all the shareholders, who offer their shares under the compulsory delisting offer, if the price payable is not paid to all the shareholders within the specified time.

However, in case the delay was not attributable to any act or omission of the acquirer or was caused due to the circumstances beyond the control of the acquirer, the SEBI may grant waiver from the payment of such interest.

### Question 5

(a) Money Plus Ltd. manages a mutual fund. The details of the mutual fund is as follows :

- Value of invested securities : ₹ 7.5 crore
- Cash and cash equivalents : ₹1.5 crore
- Accrued income : ₹ 2.3 crore
- Short-term liabilities : ₹ 10 lakh
- Long-term liabilities : ₹1.2 crore
- Accrued expense : ₹ 5 lakh
- Number of units outstanding : 2 crore of ₹ 1 each

X is holding 50,000 unit of this mutual fund, he got an offer from Y to purchase his entire holding at 110% of the net asset value. Determine the value of transaction that Y will pay to X.

(5 marks)

(b) Sun & Moon Ltd. is a Mumbai based construction company. The company is listed in National Stock Exchange. The extract of the balance sheet of Sun & Moon Ltd. is as follows :

Equity Share Capital = ₹ 10,00,000 of rupees 25 each

12% preference share capital ₹ 2,00,000 of rupees 50 each [Series A]

10.5% preference share capital ₹ 10,00,000 of rupees 100 each [Series B]

14% debenture capital ₹ 4,00,000 of rupees 50 each

- (i) What is the maximum equity share capital that can be bought back ?
- (ii) What is the maximum number of equity shares that can be bought back ?

(2+3=5 marks)

(c) Zenith Wealth Management is a leading collective investment management company, dedicated to delivering exceptional financial services. Its focus remains on data-driven strategies and personalized solutions. In this context, explain general provisions of collective investment company in terms of :

- (i) Maintaining proper books of accounts and records, etc.
- (ii) Dispatch of warrants and proceeds.

(3+2=5 marks)

**Answer 5(a)**

Net Asset Value per unit = Net Asset value of the Scheme/ Number of outstanding units

Net Asset Value of the Scheme = Market value of investments + Receivables + Accrued income + Other Assets — Accrued Expenses - Other Payables - Other Liabilities

Putting these values into the formula:

$$\text{NAV} = (\text{₹}7.5 + \text{₹}1.5 + \text{₹}2.3 - (\text{₹}0.1 + \text{₹}1.2 + \text{₹}0.05))/2$$

$$\text{NAV} = (\text{₹}11.3 - \text{₹}1.35)/2$$

$$\text{NAV} = \text{₹}4.975 \text{ per unit}$$

Since, X is holding 50,000 units, hence total value of his holding;

$$= \text{₹}4.975 \times 50,000 \text{ units}$$

$$= \text{₹}2,48,750/-$$

As Y proposed an offer @ 110%, therefore value of transaction that Y will pay to X will be:

$$= \text{₹}2,48,750/- \times 110\%$$

$$= \text{₹}2,73,625/-$$

**Answer 5(b)**

Explanation to regulation 4(i) of the SEBI (Buy-Back of Securities) Regulations, 2018 provides that in respect of the number of equity shares bought back in any financial year, the maximum limit shall be twenty-five per cent and be construed with respect to the total paid-up equity share capital of the company in that financial year.

$$\begin{aligned} \text{(i) Total No. of Equity Shares with Sun \& Moon Ltd.} &= \text{₹}10,00,000 / \text{₹}25 \\ &= 40000 \text{ shares} \end{aligned}$$

Maximum number of equity shares that can be bought back by Sun & Moon Ltd. will be:

$$= 40000 \text{ shares} \times 25\%$$

$$= 10000 \text{ equity shares}$$

Maximum equity share capital that can be bought back:

$$= 10000 \text{ equity shares} \times \text{₹}25 \text{ per share}$$

$$= \text{₹}2,50,000$$

$$\begin{aligned} \text{(ii) Total No. of Equity Shares with Sun \& Moon Ltd.} &= \text{₹}10,00,000 / \text{₹}25 \\ &= 40000 \text{ shares} \end{aligned}$$

Maximum number of equity shares that can be bought back by Sun & Moon Ltd. will be:

$$= 40000 \text{ shares} \times 25\%$$

$$= 10000 \text{ equity shares}$$

**Answer 5(c)**

(i) Regulation 40 of the SEBI (Collective Investment Schemes) Regulations, 1999 provides that:

(a) Every Collective Investment Management Company shall-

- keep and maintain proper books of account, records and documents, for each

collective investment scheme so as to explain its transactions and to disclose any point of time the financial position of each collective investment scheme and in particular give a true and fair view of the state of affairs of the collective investment scheme, and

- intimate to the SEBI and the trustees the place where such books of account, records and documents including computer records are maintained.
- (b) Every Collective Investment Management Company shall continue to maintain and preserve, for a period of five years after the close of each collective investment scheme, its books of account, records, computer data and documents.
- (ii) Regulation 42 of the SEBI (Collective Investment Schemes) Regulations, 1999 stipulates that the Collective Investment Management Company shall-
- (a) Dispatch to the unit holders the warrants within 42 days of the declaration of the interim returns.
- (b) Dispatch the redemption proceeds within 30 days of the closure or the winding up of the collective investment scheme.

**Attempt all parts of either Q. No. 6 or Q. No. 6A**

### Question 6

Write short notes on the following :

- (a) Asset Management Company (3 marks)
- (b) Frequently Traded Shares (3 marks)
- (c) Trust Deed under SEBI (Issue & Listing of Non-Convertible Securities) Regulations, 2021 (3 marks)
- (d) Code of conduct of Mutual Fund (3 marks)
- (e) Continual disclosures under SEBI (Prohibition of Insider Trading) Regulation, 2015. (3 marks)

### Answer 6

- (a) Asset Management Company

An asset management company (AMC) is a company that invests its clients' pooled funds into securities that match declared financial objectives. Asset management companies provide investors with more diversification and investing options. AMCs manage mutual funds, hedge funds and pension plans, these companies earn income by charging service fees or commissions to their clients.

The sponsor or, if so authorised by the trust deed, the trustee, shall appoint an asset management company, which has been approved by the SEBI. The appointment of an asset management company can be terminated by majority of the trustees or by seventy-five per cent of the unit holders of the scheme. Any change in the appointment of the asset management company shall be subject to prior approval of the SEBI and the unitholders.

## (b) Frequently Traded shares

Regulation 2(1)(j) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 defines that terms Frequently Traded Shares which means shares of a target company, in which the traded turnover on any stock exchange during the twelve (12) calendar months preceding the calendar month in which the public announcement is required to be made under these regulations, is at least ten percent of the total number of shares of such class of the target company.

However, where the share capital of a particular class of shares of the target company is not identical throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares.

## (c) Trust Deed

Under the SEBI (Issue and Listing of Non-Convertible Securities) Regulation, 2021, trust deed means a deed executed between the issuer and the debenture trustee for the benefit of the holders of the debt securities. The Regulations requires that the issuer and the debenture trustee shall execute the trust deed within such timelines as may be specified by the SEBI. Where an issuer fails to execute the trust deed within the specified period, the issuer shall also pay interest of at least 2 percent per annum or such other rate, as specified by the SEBI to the holder of debt securities, over and above the agreed coupon rate, till the execution of the trust deed.

Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as provided under Section 71 of the Companies Act, 2013 and Form No. SH.12 of the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts:

- a. Part A containing statutory/standard information pertaining to the debt issue.
- b. Part B containing details specific to the particular debt issue

The trust deed shall not contain any clause which has the effect of:

- Limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the holders of the debt securities.
- Limiting or restricting or waiving the provisions of the Act, these regulations and circulars or guidelines issued by the SEBI.
- Indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.

The trust deed shall contain the issuer's bank details from which it proposes to pay the interest and redemption amount of the debt securities and the issuer shall pre-authorise the debenture trustee at the time of executing the trust deed to allow the debenture trustee to seek information about interest payment and redemption payment from such bank.

The trust deed shall contain a provision, mandating the issuer to appoint the person nominated by the debenture trustee(s) in terms of the SEBI (Debenture Trustees) Regulations, 1993, as a director on its Board of Directors at the earliest and not later than one month from the date of receipt of nomination from the debenture trustee(s).

The trust deed shall also contain such other particulars as may be specified by SEBI.

## (d) Code of Conduct of Mutual Fund

The Code of Conduct of Mutual Fund are as follow:

- (i) The schemes should not be organized, operated and managed in the interest of sponsors or the directors of AMC or special class of unit holders;
  - (ii) It shall ensure the adequate dissemination of adequate, fair, accurate and timely information of all the stake holders;
  - (iii) The excessive concentration of business with the broking firm or associates should be avoided;
  - (iv) The scheme-wise segregation of bank accounts and securities accounts must be ensured;
  - (v) The investment should be made in accordance with the investment objectives stated on the offer documents;
  - (vi) It must not use any unethical means to sell, market or induce any investor to buy their schemes;
  - (vii) The high standards of integrity and fairness in all the dealings should be maintained by the trustees and AMCs;
  - (viii) The AMCs shall not make any exaggerated statements.
- (e) Continual Disclosures under the SEBI (Prohibition of Insider Trading) Regulation, 2015
- Under Regulation 7(2) of the SEBI (Prohibition of Insider Trading) Regulation, 2015:

- (a) Every promoter, member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.
- (b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

Explanation. — It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).

The above disclosures shall be made in such form and such manner as may be specified by SEBI from time to time.

**OR (Alternative question to Q. No. 6)**

**Question 6A**

- (i) What is the meaning of Holding Period Return ? Calculate holding period return for an unit holder who bought a unit at ₹ 24.60 and received a dividend of ₹ 3 per unit during the period. Face value of the unit is ₹ 10 and current unit price is ₹ 28.69.  

(5 marks)
- (ii) PQR Ltd. is a pharmaceutical company, whose equity shares are listed on BSE. Company management wish to issue sweat equity shares in accordance with provisions of the Companies Act, 2013. As a company secretary of PQR Ltd. you are required to advise its management on the following :
  - (a) Maximum quantum of sweat equity shares

- (b) Pricing of sweat equity shares  
 (c) Ceiling on managerial remunerations.

(2+1+2=5 marks)

- (iii) ABC Limited, is a newly formed manufacturing company by a prominent industrial house. Within 3 years of its incorporation, it has issued its first bonus shares. Considering its overall business performance, shares prices of ABC Limited is transacted around 18 times of its PE in Bombay Stock Exchange. But, due to some difference with its management, the Company Secretary has vacated the post of KMP.

Looking at your past performance, ABC Limited has appointed you as their new Company Secretary. One of your junior Company Secretary wanted to know, which outcomes of the board meeting should be disclosed to the Bombay Stock Exchange within 30 minutes of the closure of these meetings ? Please explain.

(5 marks)

**Answer 6(A)(i)**

Holding Period Return is the total return received from holding an asset or portfolio of assets over a period of time, generally expressed as a percentage.

Holding period return is calculated on the basis of total returns from the asset or portfolio i.e. income plus changes in value of asset. It is particularly useful for comparing returns between investments held for different periods of time.

Calculation of Holding Period Return:

$$\begin{aligned}
 \text{Holding Period Return} &= \frac{\text{Income} + (\text{Current Unit Price} - \text{Original Value}) \times 100}{\text{Original Value}} \\
 &= \frac{[\text{₹ } 3 + (\text{₹ } 28.69 - \text{₹ } 24.60)] \times 100}{\text{₹ } 24.60} \\
 &= \text{₹ } 7.09 \times 100 / \text{₹ } 24.6 \\
 &= 28.82\%
 \end{aligned}$$

=Therefore, the holding period return for the unit holder is 28.82%.

**Answer 6(A)(ii)**

Section 54 of the Companies Act, 2013 *inter alia* prescribed that where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the SEBI in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

In the given case, PQR Ltd. is a pharmaceutical company, whose shares are listed on BSE. Therefore, the company is required to comply with the provisions of the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.

- (a) Maximum quantum of sweat equity shares

In accordance with the regulations 31 of the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, a company shall not issue sweat equity shares for more than fifteen percent of the existing paid-up equity share capital in a year. However, the issuance of

sweat equity shares in the company shall not exceed twenty five percent of the paid-up equity share capital of the company at any time.

Further, a company listed on Innovators Growth Platform shall be permitted to issue not more than fifteen percent of the paid-up equity share capital in a financial year subject to overall limit not exceeding fifty percent of the paid-up equity share capital of the company, up to ten years from the date of its incorporation or registration.

(b) Pricing of sweat equity shares

In accordance with the regulations 33 of the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, the price of sweat equity shares shall be determined in accordance with the pricing requirements stipulated for a preferential issue to a person other than a qualified institutional buyer under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

(c) Ceiling on managerial remuneration

In accordance with regulations 37 of the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, the amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purpose of sections 196, 197 and other applicable provisions of the Companies Act, 2013, if the following conditions are fulfilled:

- (i) the sweat equity shares are issued to any director or manager; and
- (ii) the sweat equity shares are issued for non-cash consideration, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the relevant accounting standards.

**Answer 6(A)(iii)**

Various outcomes of the Board Meetings which are essential to be disclosed to the Stock Exchange in which the Company is Listed within 30 minutes of the closure of the meeting, are as under:

1. dividends and/ or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/ dispatched,
2. any cancellation of dividend with reasons thereof,
3. the decision on buyback of securities,
4. the decision with respect to fund raising proposed to be undertaken,
5. increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/ dispatched,
6. reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to,
7. short particulars of any other alterations of capital, including calls,
8. financial results,
9. decision on voluntary delisting by the listed entity from stock exchange(s).

In case of board meetings being held for more than one day, the financial results shall be disclosed within thirty minutes of end of the meeting for the day on which it has been considered.

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# ECONOMIC, COMMERCIAL AND INTELLECTUAL PROPERTY LAWS

## GROUP 2 PAPER 6

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-I

#### Question 1

Jindal Steel and Power Ltd. (JSPL), furnished information to the Competition Commission of India (CCI), invoking Sec. 19 read with Sec. 26(1) of the Competition Act, 2002 and alleged that Steel Authority of India Ltd. (SAIL), the respondent, had entered into an exclusive supply agreement with the Indian Railways for supply of rails. According to Sec. 3(4) of the Competition Act 2000, an exclusive supply agreement would be considered to be anti-competitive if it causes an appreciable adverse effect on competition in India. In this case, the other rail suppliers in the industry did not have an opportunity to place their bids because no tender floated by the Respondent. This resulted in filing a complaint before the Competition Commission of India (CCI) for the abuse of dominant position by SAIL. CCI registered the information provided by JSPL and directed SAIL to submit its comments within two weeks with respect to the information provided to CCI. SAIL made a prayer for an extension of six weeks for filing comments, which CCI rejected. CCI found a prima facie case against the respondents. It directed the Director General (DG) to investigate, granting liberty to the respondent to file its views and comments before the DG during the investigation. SAIL challenged the correctness of this order before Appellate Tribunal on the ground of not being heard and hence a violation of natural justice.

Commission made an application before Appellate Tribunal to implead it (SAIL) as a party to appeal. The investigation by DG was stayed by the Appellate Tribunal, it rejected CCI's plea for impleadment on the reasoning that it was neither a necessary party nor a proper party and observed that reasoning must be given for any order, direction, or decision taken. Commission went in appeal to the Supreme Court against this order of the Appellate Tribunal. From the above Case Study, answer the following questions as per provisions of the Competition Act, 2002 :

- (a) What is the meaning of Exclusive Supply/Distribution Agreement ?  
(2 marks)
- (b) What is an Anti-Competitive Agreement ?  
(2 marks)
- (c) What is the purpose of appointing Director General under Section 16(1) of the Competition Act, 2002 ?  
(2 marks)
- (d) Whether the parties, including informant (JSPL) or the affected party (SAIL), are entitled to notice or hearing, as a matter of right, at the preliminary stage of formulating an opinion as to the existence of the prima facie case ?  
(3 marks)

(e) Explain the provisions of 'Inquiry into certain Agreements and Dominant Position of Enterprise' under Section 19(1) of the Competition Act, 2002.

(3 marks)

(f) Explain the provisions of "Procedure for inquiry into certain Agreements and Dominant Position of Enterprise" under Section 26 of the Competition Act, 2002.

(3 marks)

### **Answer 1(a)**

Explanation to Section 3 of the Competition Act, 2002 defines the term "Exclusive Supply Agreement"/ "Exclusive Distribution Agreement".

"Exclusive Supply Agreement" includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.

"Exclusive Dealing Agreement": In view of the Amendment Act 2023, the exclusive supply agreements are renamed as Exclusive Dealing Agreement which includes any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be;

"Exclusive Distribution Agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or services or allocate any area or market for the disposal or sale of the goods or service.

### **Answer 1(b)**

An anti-competitive agreement is an agreement between enterprises or association of enterprises or person or association of persons including cartels, having appreciable adverse effect on competition within India. Anti- competitive agreements include, but are not limited to:

- Agreement to limit production and/or supply, storage, acquisition or control of goods or provision of services;
- Agreement to limit production and/or supply;
- Agreement to allocate markets;
- Agreement to fix price;
- Bid rigging or collusive bidding;
- Conditional purchase/ sale (tie-in arrangement);
- Exclusive supply / distribution arrangement;
- Resale price maintenance; and
- Refusal to deal.

### **Answer 1(c)**

Hon'ble Supreme Court in the case of *CCI v. SAIL (2010) 10 SCC 744* observed that the Director General (DG) appointed under Section 16(1) of the Act is a specialized investigating wing of the Commission. DG being appointed by the Central Government to assist the Commission, is one of the wings of the Commission itself to whom the investigation is directed with dual purpose;

1. to collect material and verify the information, as may be, directed by the Commission,
2. to enable the Commission to examine the report upon its submission by the DG and to pass appropriate orders after hearing the parties concerned.

Further, Section 16(1) of the Competition Act, 2002 as amended in 2023 provides that Commission may with the prior approval of the Central Government appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.

### **Answer 1(d)**

In the case of *Competition Commission of India v. Steel Authority of India (Civil Appeal No. 7779 of 2010, judgment dated September 09, 2010)*, looked into the ambit and scope of power vested with the Commission under Section 26(1) of the Competition Act and whether the parties, including the informant or the affected party, are entitled to notice or hearing, as a matter of right, at the preliminary stage of formulating an opinion as to the existence of the prima facie case.

With regard to notice and/or hearing at the stage of forming prima facie decision by the Commission under Section 26(1) of the Act, Supreme Court of India held that neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor any party can claim, as a matter of right, notice and/or hearing at the stage of formation of opinion by the Commission, in terms of Section 26(1) of the Act that a prima facie case exists for issuance of a direction to the Director General to cause an investigation to be made into the matter.

Hence informant (JSWL) and / or the affected party (SAIL) are not entitled to receive notice or hearing as a matter of right at the preliminary stage of the prima facie case.

### **Answer 1(e)**

Section 19(1) of the Competition Act, 2002 provides that the Commission may inquire into any alleged contravention of the provisions contained in section 3(1) or section 4(1) either on its own motion or on—

- (a) receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or
- (b) a reference made to it by the Central Government or a State Government or a statutory authority.

It may be noted that the Commission shall not entertain an information or a reference unless it is filed within three years from the date on which the cause of action has arisen. Provided further that an information or a reference may be entertained after the period specified in the first proviso if the Commission is satisfied that there had been sufficient cause for not filing the information or the reference within such period after recording its reasons for condoning such delay.

### **Answer 1(f)**

Section 26 of the Competition Act deals with procedure for Inquiry into Certain Agreements and Dominant Position of Enterprise. It states that:

- (1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter: It may be noted that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or

has been covered by any previous information received, then the new information may be clubbed with the previous information.

- (2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.
- (2A) The Commission may not inquire into agreement referred to in section 3 or conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information received under section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order.
- (3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.
- (3A) If, after consideration of the report of the Director General referred to in sub-section (3), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter.
- (3B) The Director General shall, on receipt of direction under sub-section (3A), investigate the matter and submit a supplementary report on his findings within such period as may be specified by the Commission.

## Question 2

- (a) VVR. Murthy, an Industrialist, wishes to take External Commercial Borrowings from Norway for the purpose of Repayment of Rupee Loan in India. Can he do so ? Give the end-uses (Negative List) under the External Commercial Borrowings (ECB).

(5 marks)

- (b) Explain and justify the following cases of 'Resident Individuals' under Foreign Exchange and Management Act, 1999 :

- (i) Tushar Mehta wishes to remit a sum of USD 50,000 as gift to his daughter in France. Whether he can do so ?
- (ii) Deepa, a young girl aged 22 years, wishes to go to Poland for a private visit and she wishes to obtain USD 2,75,000/- for her private visit. Can she obtain ?
- (iii) Akanksha, a software engineer is going for an employment in Budapest, requires a sum of USD 99,000 for her settlement abroad. Does she require prior approval of Reserve Bank of India ?
- (iv) Sandeep Sharma VP in a Domestic Indian company is going to visit the company plant location in New York for 30 days. He estimated a sum of USD 3,00,000 as expenditure. This is his first visit during the FY 2024-2025. Can he do so ?
- (v) Parents of General Manager Sushant Agarwal from Delhi, is residing in Germany.

He seeks your consultancy in sending a sum of USD 2,02,500 to his parents for their maintenance ?

(5 marks)

- (c) "Neev Builders" launched a luxury housing project, issued a prospectus and advertised that

these spacious apartments would have scenic views and all the global amenities. Umesh was impressed by this advertisement and made advance payment to book an apartment. However, later discovered several significant disparities and amenities from the promises made in the advertisement. Umesh wants to withdraw from the project.

Answer the following questions as per the provisions of Real Estate (Regulation and Development) Act, 2016 :

- (i) Explain the obligations of Neev Builders regarding veracity of the advertisement or prospectus.
- (ii) Can Umesh withdraw from the project ?

(2+3=5 marks)

### Answer 2(a)

The negative list, for which the External Commercial Borrowings (ECB) proceeds cannot be utilised, would include the following:

1. Real estate activities
2. Investment in capital market
3. Equity investment
4. Working capital purposes, except ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans and except ECB raised for (i) working capital purposes or general corporate purposes (i) on-lending by Non-Banking Financial Companies (NBFCs) for working capital purposes or general corporate purposes.
5. General corporate purposes, except in case of ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans and except ECB raised for (i) working capital purposes or general corporate purposes (i) on-lending by NBFCs for working capital purposes or general corporate purposes.
6. Repayment of Rupee loans, except in case of ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (i) on-lending by NBFCs for the same purpose and except ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose.
7. On-lending to entities for the above activities, except in case of ECB raised by NBFCs for (i) working capital purposes or general corporate purposes (ii) onlending by NBFCs for working capital purposes or general corporate purposes (iii) repayment of Rupee loans availed domestically for capital expenditure (iv) on- lending by NBFCs for purpose stated in (iii) (v) repayment of Rupee loans availed domestically for purposes other than capital expenditure (vi) on-lending by NBFCs for the purpose stated in (v) above.

In view of the above, subject to VVR Murthy complying with Para 6 of the end use list for ECB he may avail ECB Loan for repayment of Rupee Loan in India. He cannot raise ECB from foreign branches / subsidiaries of Indian banks.

### Answer 2(b)(i)

Under Liberalised Remittance Scheme, any resident individual may remit up-to USD 2, 50,000 in one financial year as gift to a person residing outside India or as donation to an organization outside India.

In light of the above, Tushar Mehta can remit a sum of USD 50,000 as gift to his daughter in France.

**Answer 2(b)(ii)**

Under Liberalised Remittance Scheme, for private visits abroad, other than to Nepal and Bhutan, any resident Individual can obtain foreign exchange up to aggregate amount of USD 2, 50,000 from an Authorized Dealer (AD) or FFMC, in any one financial year, irrespective of the number of visits undertaken during the year.

Further, all tour related expenses including cost of rail/ road/ water transportation: cost of Euro rail: passes / tickets, etc. outside India and overseas hotel/ lodging expenses shall be subsumed under the LRS limit. The tour operator can collect this amount either in Indian Rupees or in Foreign Currency for the resident traveller.

Hence, Deepa cannot obtain a sum of USD 275,000 from any Authorized Dealer (AD) or FFMC in any one FY (April- March). She can obtain only a sum of USD 2,50,000.

**Answer 2(b)(iii)**

Under Liberalised Remittance Scheme, Person going abroad for employment can draw foreign exchange up to USD 2, 50,000 per financial year from any Authorized Dealer in India.

Akanksha, who is a software Engineer, going for an employment in Budapest can acquire USD 99,000 from any authorized dealer in India without the prior approval of Reserve Bank of India.

**Answer 2(b)(iv)**

Under Liberalised Remittance Scheme, Visits by Individuals in connection with attending of International Conference, seminar, specialized apprentice training etc. are treated as business visits. For business trip to foreign countries, Individuals can avail of foreign exchange up to USD 2,50,000 in one financial year irrespective of the visits undertaken during the year.

In view of the above, Sandeep can acquire USD 250000 only.

**Answer 2(b)(v)**

Under Liberalised Remittance Scheme, resident Individual can remit up-to USD 2, 50,000 per financial year towards maintenance of relatives. 'Relative' as defined U/s 2 (77) of the Companies Act, 2013 abroad.

In view of the above, Sushant Agarwal can easily send a sum of USD 2,02,500 to his parents for their maintenance in Germany in one FY (April-March).

**Answer 2(c)(i)**

Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under the Real Estate (Regulation and Development) Act, 2016.

**Answer 2(c)(ii)**

If the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under the Real Estate (Regulation and Development) Act, 2016.

In view of the above, Umesh can withdraw from the project. Neev Builders have to compensate any loss sustained by Umesh.

### Question 3

- (a) Indian Satellite & Technology Pvt. Ltd. is an Indian start-up that has recently developed advanced Satellite technology. A major Aerospace company from Russia is interested in investing in it. Explain the Entry Routes for investment and compliance to receive the investment under the Foreign Direct Investment-Regulation and Policy.
- (b) Lokesh was suffering from a serious ailment. He was admitted to a Well-Known private hospital in Gurugram. He was subjected to various tests. Even after diagnosis and subsequent treatment, his condition deteriorated. The doctor advised surgery during which Lokesh collapsed and died. Sushma his wife, preferred a claim for compensation of ₹ 50 lakhs under the Consumer Protection Act for deficiency in services. The hospital authority contented that medical profession was being unnecessarily hounded. Is the contention tenable? Refer the relevant case law as per the provisions of Consumer Protection Act, 2019.
- (c) Ravinder is a public servant and a sum of ₹ 50 Lakhs was recovered from his car parked outside his house while he was sitting in his car with Uttam, a businessman who allegedly handed over this money to clear his Income Tax file pending with Ravinder. Explain whether this money can be regarded as 'Proceeds of Crime' under the Prevention of Money Laundering Act, 2002? What defense can Ravinder submit to prove that he is not guilty? Support your answer with relevant case law.

(5 marks each)

### Answer 3(a)

Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route. Permissible FDI can be made under "Automatic route" or "Government Route".

**Automatic Route:** It means the entry route through which investment by a person resident outside India does not require the prior approval of the Reserve Bank of India or the Central Government.

**Government Route:** It means the entry route through which investment by person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

Besides the entry conditions on foreign investment, the investment/investors are required to comply with all relevant Sectoral Cap, Sectoral Laws, Rules & Regulations made thereunder, Security conditions, and State/Local Laws/Regulations. Proposals for foreign investment under Government Route are considered by respective Administrative Ministry/Department.

100% FDI can be received in space sector. For receiving FDI in advanced Satellite technology, 74% investment can be received through automatic route. Investment beyond 74% can be received through Government approval [i.e. through Department of Space].

### Answer 3(b)

The Hon'ble Supreme Court in case of *Dr Harish Kumar Khurana vs. Joginder Singh (CA 7380 of 2009) judgement dated September 8, 2021* held that medical professionals cannot be held negligent merely because the treatment is not successful or patient dies during surgery. Every death of a patient cannot on the face of it be considered as death due to medical negligence unless there

is material on record to suggest to that effect. It is necessary that the hospital and the doctors are required to exercise sufficient care in treating the patient in all circumstance. However, in unfortunate cases though death may occur and if it is alleged to be due to medical negligence and a claim in that regard is made, it is necessary that sufficient material or medical evidence should be available before the adjudicating authority to arrive at a conclusion. The accident during the course of medical or surgical treatment has a wider meaning. Ordinarily an accident means an unintended and unforeseen injurious occurrence, something that does not occur in the usual course of events or that could not be reasonably anticipated.

In the light of above case, contention of Sushma is not tenable.

### **Answer 3(c)**

Yes, this money can be regarded as Proceeds of Crime' under the Prevention of Money Laundering Act, 2002.

In the case of *Directorate of Enforcement {Appellant(s)} vs. Padmanabhan Kishore {Respondent(s)}* (Arising out of SLP (Crl.) No. 2668 of 2022) Judgement dated October 31, 2022, Supreme Court of India inter-alia observed that the definition of "proceeds of crime" in PML Act, inter alia, means any property derived or obtained by any person as a result of criminal activity relating to a scheduled offence. The offences punishable under Sections 7, 12 and 13 are scheduled offences, as is evident from paragraph 8 of Part-A of the Schedule to the PML Act. Any property thus derived as a result of criminal activity relating to offence mentioned in said paragraph 8 of Part-A of the Schedule would certainly be "proceeds of crime". Section 3 states, inter alia, that whoever knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use shall be guilty of offence of money-laundering.

The Defence that Ravinder could submit is:

It is true that so long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money. If the money is handed over without such intent, it would be a mere entrustment. If it is thereafter appropriated by the public servant, the offence would be of misappropriation or species thereof but certainly not of bribe. The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before the amount is handed over. Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "proceeds of crime" including inter alia, the aspects of possession or acquisition thereof. By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person.

Further, Supreme Court of India held that on a bare perusal of the complaint made by the Enforcement Directorate, it is quite clear that the respondent was prima facie involved in the activity connected with the proceeds of crime.

### **Attempt all parts of either Q. No. 4 or Q. No. 4A**

#### **Question 4**

- (a) Explain the Rules of Evidence and Standard of proof required by the Special Court under Fugitive Economic Offenders Act, 2018.

(b) What are the Key highlights of Foreign Trade Policy, 2023 ?

(c) Examine the rationale of enacting the Essential Commodities Act, 1955.

(5 marks each)

#### **Answer 4(a)**

According to the Fugitive Economic Offenders Act, 2018, the rules of evidence state that the burden of proof for establishing:

- (a) that an individual is a fugitive economic offender; or
- (b) that a property is the proceeds of crime or any other property in which the individual alleged to be a fugitive economic offender has an interest, shall be on the Director or the person authorised by the Director to file the application.

Notwithstanding anything contained in any other law for the time being in force, where any person claims that any interest in any property was acquired bona fide and without knowledge of the fact that, such property constitutes proceeds of crime, the burden of proving such fact shall lie upon him.

The standard of proof applicable to the determination of facts by the Special Court under the Act shall be preponderance of probabilities.

#### **Answer 4(b)**

Key Highlights of Foreign Trade Policy, 2023 are:

- Process Re-Engineering and Automation
- Towns of Export Excellence
- Recognition of Exporters
- Promoting export from the districts
- Streamlining SCOMET Policy
- Facilitating E-Commerce Exports
- Facilitating under Export Promotion of Capital Goods (EPCG) Scheme
- Facilitating under Advance authorization Scheme
- Merchanting trade
- Amnesty Scheme

#### **Answer 4(c)**

The Essential Commodities Act, 1955 was enacted to regulate the production, supply and distribution of, and trade and commerce in, certain commodities which are declared as essential commodities and specified in the Schedule to that Act.

The Essential Commodities Act, 1955 was enacted to ensure easy availability of essential commodities to the consumers and to protect them from exploitation by unscrupulous traders. The Act provides for regulation and control of production, distribution and pricing of commodities, which are declared as essential for maintaining or increasing supplies or for securing their equitable distribution and availability at fair prices.

The Preamble to the Act says that it is an Act to provide in the interest of the general public for the control of the production, supply and distribution of, and trade and commerce in, certain

commodities. The dominant object and intendment of the Act is to secure equitable distribution and availability at fair prices of essential commodities in the interest of the general public. The interest of the general public necessarily connotes the interest of the consuming public and not the interest of the dealer.

**OR (Alternate question to Q. No. 4)**

**Question 4A**

- (i) Explain the provisions of 'Offences by Companies' under Section 62 of the Benami Transactions (Prohibition) Act, 1988.
- (ii) What are the guidelines for Notifying the Special Economic Zone under section 5 of Special Economic Zone Act 2005 ?
- (iii) What is a 'Foreign Company' and what are the conditions for receiving Foreign Contribution by a Person Resident in India as per provisions of the Foreign Contribution (Regulation) Act, 2010.

(5 marks each)

**Answer 4A(i)**

Section 62 of the Benami Transaction (Prohibition) Act, 1988 relates to consequences in case of offences by companies. Section 62 (1) provides that where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Section 62(2) states that nothing contained in sub-section (1) of this section shall render any person liable to punishment, if he proves that the contravention took place without his knowledge.

Section 62(3) provides that notwithstanding anything contained in subsection (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

**Answer 4A (ii)**

Section 5 of the Special Economic Zone Act, 2005 stipulates broader guidelines to be considered by the Central Government, while notifying any area as a Special Economic Zone or an area to be included in the SEZ and in discharging its functions under the Act. These include:

- (a) generation of additional economic activity;
- (b) promotion of exports of goods and services;
- (c) promotion of investment from domestic and foreign sources;
- (d) creation of employment opportunities;
- (e) development of infrastructure facilities; and
- (f) maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.

**Answer 4A (iii)**

According to Section 2(g) of the Foreign Contribution (Regulation) Act, 2010 “Foreign Company” means any company or association or body of individuals incorporated outside India and includes—

- i. A foreign company within the meaning of the Companies Act, 1956/2013;
- ii. A company which is a subsidiary of a foreign company;
- iii. The registered office or principal place of business of a foreign company referred to in sub-clause (i) or company referred to in sub-clause (ii);
- iv. A multi-national corporation.

It may be noted that a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation,

- (a) has a subsidiary or a branch or a place of business in two or more countries or territories; or
- (b) carries on business, or otherwise operates, in two or more countries or territories;

Any “Person” can receive foreign contribution subject to the following conditions:

- It must have a definite cultural, economic, educational, religious or social programme.
- It must obtain the FCRA registration/prior permission from the Central Government It must not be prohibited under Section 3 of FCRA, 2010.

It may be noted that “Person” includes (i) (i) (iii) (iv) an individual; a Hindu undivided family; an association; a company registered under section 25/8 of the Companies Act, 1956/2013 respectively.

**PART-II****Question 5**

- (a) “Energize-52” is a popular cough syrup manufactured since 2015 by “Jeevan Pharma Company”. The trade mark “Energize-52” was registered in 2017, and almost seven years had expired from the date of its registration. This syrup was highly popular among the consumers who asked for “Energize-52” over the other syrups available and the voluminous sales figures prove its widespread consumer recognition. In January 2024 “Jeevan Pharma Company” discovered that a new Competitor in the market had also launched a similar syrup under the brand name “Energize-T” using a logo and brand name that is deceptively similar to the registered trade mark of “Energize-52”.

In view of the above case, answer the following questions with support of relevant provisions of the Trade Marks Act, 1999 :

- (i) Is there an infringement of the trade mark “Energize-52” by the new competitor ?  
(2 marks)
- (ii) What defences can be pleaded by “Energize-T” ?  
(2 marks)
- (iii) What defences can be raised by “Energize-52” to prove the distinctiveness of its trade mark ?  
(2 marks)
- (iv) What are the relative grounds for refusal of trade mark registration ?  
(2 marks)

- (v) What orders can the Court pass against the competitor's use of the trade mark "Energize-T" ?

(2 marks)

- (b) Rohit has authored a book titled "A Concise History of Jaipur", and the manuscript was given to Varun for printing. A dispute arose among the two as Rohan contended that Varun had no right to publish the book as there was no assignment of the copyright. On the other hand, Varun argued that there was an oral agreement in which Rohit assigned the copyright in exchange for the printing expenses that entitled him to publish it. In reality, Rohit did not give a written or oral copyright assignment in favour of Varun to publish the books.

Based on the above, answer the following questions with relevant provisions of the Copyright Act, 1957.

- (i) Do you think the requirements for the assignment of copyright were fulfilled ?

(2 marks)

- (ii) In case of assignment of copyright to Varun, when will it be deemed to have lapsed ?

(2 marks)

- (iii) What rights can Rohit claim if the work is utilised in any other form ?

(2 marks)

- (iv) When can the court revoke the assignment of copyright if granted to Varun ?

(2 marks)

- (v) What will the Court do if it receives a complaint regarding this assignment of copyright?

(2 marks)

### **Answer 5(a)(i)**

Yes, there is an infringement of the trademark "Energize-52" by the new competitor through its use of the trademark "Energize-T". "Energize-52" has been in use since 2015, was registered in the year 2017 and almost seven years have expired from the date of its registration. Since then, it has achieved distinctiveness through voluminous sales and widespread consumer recognition.

### **Answer 5(a)(ii)**

The present case is similar to the case of *Himalaya Drug Company vs. S.B.L. Ltd.* 2013 (53) PTC 1 (Del.) (DB), the competitor can raise the defence that the mark "Energize" is *publici juris* (belonging to the public), and there is no similarity between the two trademarks. 'Energize' will be considered the generic and non-distinctive part of the mark, and it is to be ignored even if the two rival marks are to be taken as a whole.

### **Answer 5(a)(iii)**

"Energize-52" can provide evidence that it had voluminous sales, was being manufactured since the year 2015 and was registered since the year 2017 and as seven years had expired from the date of the registration, the Registration of the trade mark was taken to be valid as per Trade Marks Act. Their mark has distinctiveness can be proved by providing the orders where the mark has been granted protection. The consumer asked for their product with all its essential and prominent features of the mark.

**Answer 5(a)(iv)**

Section 11(1) of the Trade Marks Act, 1999 stipulate on Relative Grounds for Refusal of Registration. Section 11(1) provides that a trade mark shall not be registered if, because of:

- (a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or
- (b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

Section 11 (2) states that a trade mark which (a) is identical with or similar to an earlier trade mark; and (b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor, shall not be registered if or to the extent the earlier trade mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.

Section 11 (3) provides that a trade mark shall not be registered if, or to the extent that, its use in India is liable to be prevented—

- (a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade; or
- (b) by virtue of law of copyright.

**Answer 5(a)(v)**

The Court can restrain the competitor from using the trademark “Energize-T” and can allow them to amend ‘its mark to one that would not be similar to the trademark “Energize-52” of “Jeevan Pharma Company’.

**Answer 5(b)(i)**

Section 19 of the Copyright Act, 1957 provides that an assignment of the copyright in any work should be in writing signed by the assignor or by his duly authorised agent. The assignment of copyright in any work required to identify such work, and also specify the rights assigned; the duration; territorial extent of such assignment; the amount of royalty and any other consideration payable to the author or his legal heirs during the currency of the assignment and the assignment subject to revision, extension or termination on terms mutually agreed upon by the parties.

In view of the above provision the requirement of copyright were not fulfilled.

**Answer 5(b)(ii)**

According to Section 19(4) of the Copyright Act, 1957, where the assignee does not exercise the rights assigned to him within a period of **one year** from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

Section 19(5) of the Copyright Act, 1957 provides that if the period of assignment is not stated, it shall be deemed to be **five years** from the date of assignment.

**Answer 5(b)(iii)**

The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member is void.

The Assignment of copyright in any work to make a cinematograph film does not affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilization of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.

Rohit can claim his rights if the work is utilised in the aforesaid form.

#### **Answer 5(b)(iv)**

Section 19A (1) of the Copyright Act, 1957 provides that if an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then the Commercial Court may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.

#### **Answer 5(b)(v)**

According to Section 19A (2) of the Copyright Act, 1957, if any dispute arises with respect to the assignment of any copyright, the Court may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable.

Provided that the Commercial Court shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author.

### **Attempt all parts of either Q. No. 6 or Q. No. 6A**

#### **Question 6**

(a) 'EcoSustain World' is a multinational corporation with a registered well-known Trade Mark protected across different categories of goods and services and a strong global brand reputation. A new Indian company started using a deceptively similar Trade Mark. Can 'EcoSustain World' protect its trade mark in India ?

- (i) Explain with an example the significance of a well-known trade mark as per provisions of the Trade Marks Act, 1999.
- (ii) Why Registrar will protect 'EcoSustain World' ?

(2+3=5 marks)

(b) A food and beverage company wants to protect its unique recipe under Trade Secrets law. Can they do so ? Explain the concept of 'Trade Secrets' with examples. State the duration and conditions for preservation of the trade secrets.

(5 marks)

(c) 'Heavy Duty Company' manufactures 'Pick-N-Carry Hydraulic Self Mobile Cranes' developed and registered under the Designs Act, 2000. They filed a suit for permanent injunction and infringement against 'Robust Mechanicals Company', who began manufacturing and selling mobile cranes that were visually identical to the original design of 'Heavy Duty Company' claiming that their machine is "new or original".

- (i) With the support of a case law, discuss the requirements of for a design to be considered significantly "new or original".
- (ii) What is the Court's duty while determining if a design is "new or original" ?

(3+2=5 marks)

- (d) Ravi holds Patents for a specific design of tamper-proof locks sold under the trade mark "Tech-Lock". He sought an injunction against Sumit for infringement of his patented invention and restrain claiming a patent of addition. Sumit contends that patent of addition does not disclose the innovative step.
- (i) State the rules relating to "Patent of Addition" as per Section 54 of the Patent Act, 1970.
  - (ii) State with support of case law whether the application by Ravi can be rejected on the ground of innovative step ?

(3+2=5 marks)

**Answer 6(a)(i)**

Yes, 'EcoSustain World' can protect its well-known Trademark in India.

In terms of Section 2(1)(zg) of the Trade Marks Act, 1999, a well-known trade mark in relation to any goods or services means a mark which has become so to the substantial segment of the public which uses such goods or services such that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

For Example: Google has been registered as a well-known trademark of Alphabet Inc., which thereby means only Alphabet Inc. can register the term 'Google' for any category of goods and services. Even if the service is not related to the Internet industry, no other company but Alphabet Inc. can register 'Google' as its trademark.

**Answer 6(a)(ii)**

With coming up of the Trade Mark Rules 2017, a new procedure has been created that allows the Registrar to proclaim a particular trademark as "well known". According to the Trade Mark Rules 2017, a trademark owner can file an application in form TM-M with a request made to the Registrar for declaring the mark to be "well-known". A well-known trade mark has been vouchsafed with extraordinary protection and safeguards against passing off and infringement of such trademarks. Well-known trademarks are recognised in India on the basis of their reputation, nationally, internationally and the cross-borders. Unlike other trademarks whose goodwill and reputation is limited to a certain specified geographical area and to a certain range of products, well-known trademarks have its goodwill and reputation protected across the nation and across categories of goods and services. It is law that restricts the Trade Mark Registry to allow and register any mark as a trademark which is deceptively similar to any of the well-known trademark.

**Answer 6(b)**

Yes, they can do so

*Trade Secret*

A trade secret is a method, practice, procedure, design, instrument, pattern, or collection of information that is not widely known or easily discoverable and through which a company might gain a competitive edge over rivals or clients. An enterprise may gain a competitive edge from secret business information.

*Examples*

Sales techniques, distribution strategies, consumer profiles, marketing plans, client and supplier lists, production procedures, and advertising strategies are all examples of trade secrets.

### *Duration and Conditions*

A trade secret can be preserved indefinitely, but there must be a significant amount of secrecy, making it difficult to obtain the information unless inappropriate means are used.

#### **Answer 6(c)(i)**

Hon'ble Supreme Court of India held that expression new or original appearing in Section 4 of the Design Act means that the design which has been registered has not been published anywhere or it has been made known to the public and that it had been invented for the first time or it has not been reproduced by anyone.

In the matter of *M/s Brighto Auto Industries vs. Shri Raj Chawla (ILR 1978 (I) Delhi)* it was held by the Honorable Court that new is taken generally to mean as different to what has gone before and original as something originating from the author. In the matter of novelty, the eye has to be the ultimate arbiter and the determination has to rest on the general ocular impression. To secure recognition for its newness or originality it is imperative that a design identical with or even materially similar to the relevant design should not have been published or registered previously. A slight trivial or infinitesimal variation from a pre-existing design will not qualify it for registration taking into account the nature involved the change introduced should be substantial. It is not necessary to justify registration that the whole of the design should be new, the newness may be confined to only a part of it but that part must be a significant one and it should be potent enough to impart to the whole design a distinct identity, unless the registration sought for the said part alone.

#### **Answer 6(c)(ii)**

It is the duty of the Court to take special care that no design shall be counted new or original, unless it is distinct from what previously existed by something essentially new or original which is different from ordinary trade variants, which may have lost, been common matters of test or choice in that trade.

#### **Answer 6(d)(i)**

Section 54 of the Patents Act, 1970 provides that where an application is made for a patent in respect of any improvement in or modification of an invention described or disclosed in the complete specification filed therefor (in this Act referred to as the "main invention") and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.

Where an invention, being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the Controller may, if the patentee so requests, by order, revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date as the date of the patent so revoked.

A patent shall not be granted as a patent of addition unless the date of filing of the application was the same as or later than the date of filing of the application in respect of the main invention.

A patent of addition shall not be granted before grant of the patent for the main invention.

#### **Answer 6(d)(ii)**

A patent of addition application cannot be rejected on the grounds that the disclosure in the primary application or patent lacked innovative step. However, the disclosure in the main application or patent may be used as evidence of innovation against the patent addition application.

In the matter of *Ravi Kamal Bali v/s Kala Tech* and others the Bombay High Court on 12<sup>th</sup> February, 2008 dismissed the defendant's arguments that Patent of addition can only be granted if it has an inventive step over the main application.

**OR (Alternate question to Q. No. 6)**

**Question 6A**

- (i) What are main topics addressed by Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreements ? (5 marks)
- (ii) What is meant by "Act of unfair competition" under the Geographical Indications of Goods (Registration and Protection) Act, 1999 ? What acts shall be deemed to be the acts of unfair competition ?  
(5 marks)
- (iii) Explain the provisions of 'power of police to seize infringing copies' under Section 64 of the Copyright Act, 1957.  
(5 marks)
- (iv) Write short notes on the following with regard to the Patents Act, 1970 :
- Compulsory Licences
  - Patent Agent.

(3+2=5 marks)

**Answer 6A(i)**

The main Topics addressed by Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement are as under:

- How general rules and fundamental ideas of the global trading system apply to international intellectual property?
- What are the minimum protection criteria for intellectual property rights that members should offer?
- What mechanisms should members offer to defend those rights in their home countries?
- Specific interim framework for resolving intellectual property disputes between WTO members in order to implement TRIPS requirements.
- Special transitional arrangements for the implementation of TRIPS provisions.

**Answer 6A(ii)**

According to the Geographical Indications of Goods (Registration and Protection) Act, 1999 "act of unfair competition" means any act of competition contrary to honest practices in industrial or commercial matters. The following acts shall be deemed to be acts of unfair competition, namely:

- All acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor;
- False allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competitor;

- Geographical Indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

### **Answer 6A(iii)**

Section 64(1) of the Copyright Act, 1957 empowers any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purposes of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable be produced before a Magistrate.

Section 64(2) states that any person having an interest in any copies of a work, or plates seized under sub-section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copies, or plates being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary shall make such order on the application as he may deem fit.

### **Answer 6A(iv)**

#### **Compulsory Licenses**

Compulsory licenses are authorizations given to a third-party by the Controller General to make, use or sell a particular product or use a particular process which has been patented, without the need of the permission of the patent owner. This concept is recognised at both national as well as international levels, with express mention in both

Patents Act, 1970 and TRIPS Agreement. There are certain prerequisite conditions, given under sections 84-92 of the Patents Act, 1970 which need to be fulfilled if a compulsory license is to be granted in favour of someone.

Grant of compulsory licence on patent could be on any of the following grounds, namely:

- (a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or
- (b) that the patented invention is not available to the public at a reasonably affordable price, or
- (c) that the patented invention is not worked in the territory of India.

#### **Patent Agent**

The work relating to drafting of specifications, making of application for a patent, subsequent correspondence with the Patent office on the objections raised, representing the applicant's case at the hearings, filing opposition and defending application against opposition is entrusted to a qualified Patent Agent. Sections 125-132 of the Patents Act, 1970 read with the Patents Rules dealt in with the Patent Agents.

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# TAX LAWS AND PRACTICE

## GROUP 2 PAPER 7

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

### PART- I

#### Question 1

G & Co. a partnership firm of medical practitioners in which Dr. Lalit and Dr. Arihant are equal partners, furnishes the following receipt and payment account for the previous year ending 31st March, 2024 :

Receipts	Amount (₹)	Payments	Amount (₹)
Balance B/f	75,000	Remuneration to Partners	18,00,000
Consultation fee	22,80,000	Assistant Salary	4,65,000
Visiting fee	26,51,000	Municipal Tax paid	50,000
Operation theatre charges	1,60,000	Instalment paid of housing loan (Interest component ₹ 48,000)	1,00,000
Rent received from House Property in the name of firm	2,40,000	Interest paid to partners' capital @ 15% p.a.	1,80,000
Income from winning of online games (net after deduction of TDS @ 30%)	70,000	Advance tax paid	60,000
Amount received from buy back of listed equity share	5,00,000	Purchase of medical instruments (date of purchase 1 <sup>st</sup> March, 2024)	3,00,000
Dividend received from the share of Zeta Ltd.	24,000	Administrative Expenses	20,00,000
		Balance C/f	10,45,000
	60,00,000		60,00,000

Other relevant informations are as under :

- Total allowed depreciation u/s 32 of Income Tax Act, 1961 to Firm (other than new medical instrument purchased on 1st March, 2024) was ₹ 75,000.
- Rent received – relates to a property situated at Mysore in name of the firm :

Municipal value of such property is ₹ 2,00,000. Municipal tax is ₹ 10,000 per annum. During the year firm paid total municipal tax of ₹ 50,000. (Current year and advance for next 4 years).

- (iii) Salary of ₹ 75,000 per month paid to each partner, both partners are working partners of the firm (as authorized by the deed of partnership).
- (iv) Interest on capital at 15% per annum (as per the deed of partnership). The amount of capital eligible for interest is ₹ 6,00,000 for each partner.
- (v) The firm purchased 100 shares of Zeta Ltd. on 12th January, 2023 through recognised stock exchange in India at the rate of ₹ 4,250 per share. Such shares are given to the company under the scheme of buy back u/s 115QA on 15th January, 2024 at the rate of ₹ 5,000 per share.

On the basis of above informations, you are required to give the following answers :

- (a) Compute the book profit of firm under section 40(b) of the Income Tax Act, 1961. (3 marks)
- (b) Compute the Permissible remuneration to partners by firm under Section 40(b)(v) of Income Tax Act, 1961. (2 marks)
- (c) Compute the Income chargeable under the head of house property for G & Co. for the assessment year 2024-25. (2 marks)
- (d) Compute the Income chargeable under the head of Income from Other Sources for G & Co. for the assessment year 2024-25. (2 marks)
- (e) Compute the Income chargeable under the head of Profits and Gains from Business & Profession, if firm opts to pay tax under presumptive taxation scheme u/s 44ADA of the Income Tax Act, 1961 for the assessment year 2024-25. (2 marks)
- (f) What is the due date for filing its return u/s 139(1) in the following cases ?
  - (i) If firm opts to pay tax under presumptive taxation scheme u/s 44ADA.
  - (ii) If firm does not opt to pay tax under presumptive taxation scheme u/s 44ADA. (2 marks)
- (g) In case G & Co. does not opt for presumptive taxation scheme u/s 44ADA, what are the obligations under the Income Tax Act, 1961 ? (2 marks)

**Answer 1(a)**

**Computation of Book Profit of G & Co. for A.Y. 2024-25**

Particulars	Amount (Rs.)	Amount (Rs.)
Gross receipts from Firm (Professional receipts)		

Consultation fee	22,80,000	
Visiting fee	26,51,000	
Operation theatre charges	1,60,000	
		50,91,000
Less: Allowable Expenses		
Assistant Salary	4,65,000	
Interest to partners @ 12% p.a. only (1,80,000 /15 * 12)	1,44,000	
Administrative Expenses	20,00,000	
Allowed Depreciation u/s 32 – Rs. 75,000	97,500	
Add: Dep. on medical instrument @ 7.5%      Rs. 22,500		
		(27,06,500)
Book Profit u/s 40(b)		23,84,500

**Answer 1(b)****Computation of Permissible Remuneration to partner for A.Y. 2024-25**

Particulars	Amount (Rs.)	Amount (Rs.)
Actual Remuneration given to Partners (A)		18,00,000
Maximum permissible u/s 40(b)(v)		
(i) Book Profit upto first 3,00,000 @ 90% (3,00,000 * 90%)	2,70,000	
(ii) Remaining Book Profit @ 60% {(23,84,500 - 3,00,000) * 60%}	12,50,700	
Maximum permissible remuneration (B)		15,20,700
Allowed remuneration u/s 40(b)(v) is lower of (A) or (B)		15,20,700

**Answer 1(c)****Computation of Income from House Property for the A.Y. 2024-25**

Particulars	Amount
Municipal value	2,00,000
Actual Rent received from House Property	2,40,000
Gross annual value (whichever is higher)	2,40,000
Less: Municipal tax paid during the year	(50,000)

Net Annual value	1,90,000
Less: Deduction u/s 24@ 30% of NAV (1,90,000 x 30%)	(57,000)
Less: Interest on housing loan (Assumed Loan for Let out property)	(48,000)
Income from House Property	85,000

**Answer 1(d)****Computation of Income from Other Sources for the A.Y. 2024-25**

Particulars	Amount
Income from winning of online games (Gross up) $\{70,000/70 * 100\}$	1,00,000
Dividend received from the share of Zeta Ltd	24,000
Income from Other Sources	1,24,000

**Answer 1(e)****Computation of income from Business and Profession as per presumptive taxation scheme u/s 44ADA for the A.Y. 2024-25**

Particulars	Amount
Gross receipts of Firm (Professional receipts)	
Consultation fee	22,80,000
Visiting fee	26,51,000
Operation theatre charges	1,60,000
Gross Receipt of the Firm	50,91,000
Presumptive Income u/s 44ADA 50% of Gross Receipt $(50,91,000 * 50\%)$	25,45,500
<p><b>Note: Maximum Limit of receipts for eligibility u/s 44ADA is 50 lakhs. However, in case of an assessee where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed 5% of the total gross receipts of such previous year, this sub-section shall have effect as if for the words "fifty lakh rupees", the words "seventy-five lakh rupees" had been applied.</b></p> <p><b>Accordingly, it is assumed that the receipt received in cash does not exceed 5% of the total gross receipts and accordingly section 44ADA is applicable.</b></p>	

**Alternate Answer 1(e)****Computation of income from Business and Profession as per presumptive taxation scheme u/s 44ADA for the A.Y. 2024-25**

Particulars	Amount
Gross receipts of Firm (Professional receipts)	
Consultation fee	22,80,000
Visiting fee	26,51,000
Operation theatre charges	1,60,000
Gross Receipt of the Firm	50,91,000
Presumptive Income u/s 44ADA 50% of Gross Receipt	-
<p><b>Note: Maximum Limit of receipts for eligibility u/s 44ADA is 50 lakhs. However, in case of an assessee where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed 5% of the total gross receipts of such previous year, this sub-section shall have effect as if for the words "fifty lakh rupees", the words "seventy-five lakh rupees" had been applied.</b></p> <p><b>It is assumed that the receipt received in cash exceed 5% of the total gross receipts. Accordingly, section 44ADA is not applicable in this case.</b></p>	

**Answer 1(f)****Due date of filing of Return u/s 139(1) of Partnership Firm**

Particulars	Due Date
i. If firm opts to pay tax under presumptive taxation scheme u/s 44ADA: In this case Audit u/s 44AB is not required, hence due date of filing of return u/s 139(1) is 31 <sup>st</sup> July of the relevant assessment year.	31 <sup>st</sup> July, 2024
ii. If firm does not opt to pay tax under presumptive taxation scheme u/s 44ADA: In this case Audit u/s 44AB will apply as receipts exceeds Rs. 50 lakhs and due date of filing of return will be 31 <sup>st</sup> October of the relevant assessment Year.	31 <sup>st</sup> October, 2024

**Answer 1(g)**

If firm does not opt to pay tax under presumptive taxation scheme u/s 44ADA following obligation is required:

- i. Keep and maintain the compulsory books of accounts u/s 44AA.
- ii. Accounts are required to be Audited from practicing chartered Accountant under section 44AB of Income Tax Act, 1961.

**Question 2**

- (a) Mrs. Vijayta aged 31 years working as finance manager of M/s MPK & Co. Pvt. Ltd. registered at Mumbai. She has been in continuous service since 1-8-2018 and received the following

salary and perks from the company during the year ending 31-3-2024 :

- (i) She joined the service in the grade of ₹ 40,000-5,000-60,000-6,000-90,000 on 1-8-2018.
- (ii) Dearness Allowance 40% of basic pay forming part of retirement benefits.
- (iii) The Company gifted a Smart Watch costing ₹ 35,000 to Mrs. Vijayta on the occasion of her birthday.
- (iv) Children education allowance for one child ₹ 2,500 per month.
- (v) Entertainment Allowance ₹ 2,400 per month.
- (vi) Motor car (engine cubic capacity below 1.60 liters) owned by employer and provided to employee since 01-08-2023. It is partly used for official and personal purposes by the employee. Expenditure fully met by the employer ₹ 75,100. (Car is self-driven by the employee).
- (vii) Leave travel facility provided by her employer to Mrs. Vijayta, her husband and one child. Cost of air tickets (economy class) reimbursed by the employer ₹ 35,000 per person. Vijayta is eligible for availing exemption this year to the extent it is permissible in law.
- (viii) The employer also paid professional tax of ₹ 2,500 for F.Y. 2023-24 on behalf of Mrs. Vijayta to State Govt.

You are required to compute the Taxable Income under the head of Salary of Mrs. Vijayta for the assessment year 2024-25, assuming that she opts the benefits of the provisions under section 115BAC.

(5 marks)

- (b) Jackson, a US national came to India for the first time on 11th July, 2023 for business in India, before this he never travelled in India. He declared following incomes during the previous year ending 31st March, 2024 :

Sl. No.	Particulars	Amount (₹)
(i)	Profit on sale of a building in India but received in USA	2,00,000
(ii)	Technical fees received from an Indian company in USA for advice given by him in respect of a new project situated in China	7,50,000
(iii)	Income from a business in USA, received in USA but business is being controlled from India	6,00,000
(iv)	Past foreign untaxed income brought to India during the previous year	11,00,000
(V)	Rent from property in USA deposited in branch of State Bank of India situated in USA	2,25,000
(vi)	Interest on fixed deposit in a ICICI Bank in India	40,000

You are required to compute Jackson's Taxable Income in India for the assessment year 2024-25.

(5 marks)

- (c) Raghuvver let out a property on rent for ₹ 16,000 per month from 16th February, 2023. Fair rental value of such property is ₹ 60,000 per quarter, whereas Standard rent is ₹ 3,20,000 per annum. During the financial year 2023-24, Raghuvver paid following expenses for such house property :

Municipal taxes for F.Y. 2023-24 - ₹ 30,000 (which is 10% of municipal value);

Lease rent- ₹ 32,800;

Repair charges - ₹ 23,700;

Fire insurance - ₹ 31,150; and

Interest on capital borrowed for construction - ₹ 72,300.

The construction of the property was completed on 15th February, 2023. The tenant had vacated this house on 29th February, 2024. Such house was vacant for the month of March, 2024.

You are required to calculate the taxable income from the house property of Raghuvver for the assessment year 2024-25, assuming that he does not opt to pay tax under section 115BAC.

(5 marks)

### Answer 2(a)

#### Computation of Taxable Income from Salary of Mrs. Vijayta for A.Y. 2024-25 (Under the scheme of provisions of section 115BAC)

Particulars	Amount
Basic Salary (W.N. 1)	7,68,000
From 1-4-2023 to 31-7-2023 (Rs. 60,000 x 4) Rs. 2,40,000	
From 1-8-2023 to 31-3-2024 (Rs. 66,000 x 8) Rs. 5,28,000	
Dearness Allowance 40% of Basic Pay (Rs. 7,68,000 x 40%)	3,07,200
Gift received from employer on birthday [Entire amount is taxable since the perquisite value exceeds Rs. 5,000 as per Rule 3(7)(iv)]	35,000
Children education allowance (Rs. 2,500 x 12) Rs. 30,000 Less: Exemption (not allowed under section 115BAC) Nil	30,000
Entertainment Allowance (fully taxable) (Rs. 2,400 x 12)	28,800
Motor car Facility (1,800 pm is taxable from 1-8-2023) (Rs. 1,800 x 8)	14,400
Leave travel facility (fully taxable under section 115BAC) (Rs. 35,000 x 3)	1,05,000
Professional Tax paid by Employer (fully taxable)	2,500
Gross Income from Salary	12,90,900
Less: Standard Deduction u/s 16(ia) (Allowed u/s 115BAC)	(50,000)

Less: Entertainment Allowance (not allowed to non-Government employee and also not allowed under section 115BAC)	Nil
Less: Professional Tax u/s 16(iii) (Not allowed under the scheme of 115BAC)	Nil
Net Income from Salary	12,40,900

**Working Note: Calculation of Salary using grading system**

Particular	Amount
Salary Grade (40,000-5,000-60,000-6,000-90,000)	
Salary from 1-8-2018 to 31-7-2019	40,000 p.m.
Salary from 1-8-2019 to 31-7-2020	45,000 p.m.
Salary from 1-8-2020 to 31-7-2021	50,000 p.m.
Salary from 1-8-2021 to 31-7-2022	55,000 p.m.
Salary from 1-8-2022 to 31-7-2023	60,000 p.m.
Salary from 1-8-2023 to 31-7-2024	66,000 p.m.

Note: The computation of taxable income from Gift received from employer on birthday can be considered as Rs. 30,000 (Rs. 35000 - 5000 as exempt perquisites by taking reference to the circular No. 15/ 2001).

**Answer 2(b)**

Jackson, a US national, came to India for the first time on 11<sup>th</sup> July, 2023. So, during the financial year 2023- 24 he was in India for 265 days, before this year he never travelled in India. So, he satisfied first basic condition of 182 days in India, but not satisfied the additional conditions.

Hence his residential status for F.Y. 2023-24 is **Resident but Not Ordinary Resident (NOR) in India.**

**Computation of Taxable Income of Jackson (NOR) for the AY 2024-25**

S. No.	Particulars	Amount
i.	Profit on sale of a building in India but received in USA	2,00,000
ii.	Technical fees received from an Indian company in USA for advice given by him in respect of a new project situated in China. (Not Taxable, because it is not deemed to accrue or arise in India and Not received in India)	-
iii.	Income from a business in USA, received in USA but controlled from India (Taxable in case of NOR)	6,00,000
iv.	Past foreign untaxed income brought to India during the previous year (Not Taxable)	-
v.	Rent from property in USA deposited in branch of State Bank of India situated in USA (Not Taxable)	-

vi.	Interest on fixed deposit in a ICICI Bank in India	40,000
vii.	Taxable Income in India	8,40,000

**Answer 2(c)****Computation of Taxable House Property Income of Raghuveer (NOR) for the AY 2024-25**

Particulars	Amount
Municipal Value (Rs. 30,000/10 x 100)	3,00,000
Fair Rent (Rs. 60,000 x 4)	2,40,000
Higher of the two (A)	3,00,000
Standard Rent (B)	3,20,000
Reasonably expected rent - lower of (A) and (B)	3,00,000
Annual Rent Received or Receivable (Rs. 16,000 x 12)	1,92,000
Higher of the Expected rent and Annual Rent	3,00,000
Less: Vacant Period Rent (1 Month)	(16,000)
Gross Annual Value	2,84,000
Less: Municipal tax paid during the year	(30,000)
Net Annual Value	2,54,000
Less: Deduction u/s 24@ 30% of NAV (Rs. 2,54,000 x 30%)	(76,200)
Less: Interest on moneys borrowed for construction	(72,300)
Income from House Property	1,05,500

**Question 3**

- (a) Kartik purchased a house property on 20th June, 1995 for consideration of ₹ 2,25,000. He incurred following expenses for making addition/alternation to the house property :

Particulars	Amount (₹)
Cost of construction of first floor in 1997-98	6,00,000
Cost of construction of second floor in 2011-12	7,00,000
Reconstruction of whole property in PY 2022-23	16,55,000
FMV of the property as on 1-4-2001 was	8,50,000

This House property is sold by Kartik to Jagdish on 10th August, 2023 for ₹ 58,00,000. The

valuation determined by the stamp valuation authority was ₹ 65,50,000. Expenses incurred on transfer of house property was ₹ 25,000.

Compute the capital gains arising on sale of the house property by Kartik for the assessment year 2024-25.

**Note :** [CII : FY 2001-02 : 100; 2011-12: 184; 2022-23: 331; 2023-24: 348]

(5 marks)

- (b) Mr. Harish is Lawyer by profession and his income from profession for the financial year 2023-24 is ₹ 8,00,000. From the following information given by him :-

S. No.	Particulars	Amount (₹)
(i)	Loss from house property (computed)	2,50,000
(ii)	Loss from Speculation business of Share trading	1,10,000
(iii)	Long-term capital gain from equity shares under section 112A	1,50,000
(iv)	Short term capital loss from equity shares under section 111A	6,25,000
(V)	Income of minor daughter Vernika (professional dancer) from her dance performances	15,00,000
(vi)	Interest from Canara bank received by Vernika on deposit made out of income earned from her dance performances	15,000

You are required to compute his total income for A.Y. 2024-25 and the losses to be carried forward assuming that he files his income tax returns every year before due date u/s 139(I) of Income Tax Act, 1961, assuming that Mr. Harish does not opt for the provisions of section 115BAC and his income before considering clubbing provisions is higher than that of his wife.

(5 marks)

- (c) Particulars of income received by Anuradha for the year ended 31st March, 2024 are as follows :

S. No.	Particulars	Amount (₹)
(i)	Amount received from LIC as a death benefit of her husband's insurance policy	6,25,000
(ii)	Winning from Horse race (gross)	70,000
(iii)	Amount Received from online lotteries (net)	1,05,000
(iv)	Diamond Jewellery received as gift from her father's sister on her 50th Birthday	75,000
(v)	Family pension received from the Government of Rajasthan (' 3,000 per month)	36,000

(vi)	She has taken a house on rent for ₹ 30,000 per month. Half portion of this house was used for own residential purpose and half of this house was sub-let on a monthly rent of ₹ 20,000 per month.	
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From the above information, compute income from other sources of Anuradha for the assessment year 2024-25, assuming that she has opted to pay tax under section 115BAC.

(5 marks)

### Answer 3(a)

#### Computation of Capital Gain for Kartik

Particulars	Amount
Gross Sale Consideration (W. N. 1)	65,50,000
Less: Expenses on transfer	(25,000)
Net Sales Consideration	65,25,000
Less: Indexed Cost of Acquisition (W.N. 2) (Rs. 8,50,000/100*348)	(29,58,000)
Less: Indexed Cost of Improvement PY 1997-98 taken as Nil (W. N. 3)	Nil
Less: Indexed cost of improvement PY 2011-12 (Rs. 7,00,000 / 184 * 348)	(13,23,913)
Less: Indexed cost of improvement PY 2022-23 (Rs. 16,55,000 / 331 * 348)	(17,40,000)
Long Term Capital Gains	5,03,087

#### Working Note:

- As per section 50C of the Income tax Act, 1961, where the actual sale consideration is less than the value adopted by the Stamp Valuation Authority and such stamp duty value exceeds 110% of the actual sale consideration then, the value adopted by the Stamp Valuation Authority shall be taken to be the full value of sales consideration. Accordingly, in this case, Sales consideration of house property for capital gain purpose will be taken as Rs. 65,50,000.
- For house property acquired before 01-04-2001, assessee has option to take higher value as cost of acquisition either from actual purchase cost or fair market value as on 01-4-2001. Accordingly, in this case, Cost of acquisition for capital gain purpose will be taken as Rs. 8,50,000 (higher from 2,25,000 or 8,50,000)
- Cost of Improvement before 01-4-2001 shall be taken as Nil

**Answer 3(b)****Computation of Gross Total Income of Harish for A.Y. 2024-25**

Particulars	Amount	Amount
<b>Income from House Property:</b>		
Loss from house property (Computed)	(2,50,000)	
Less: Loss from house property (can be set-off to the extent of Rs. 2,00,000, as per section 71 (3A), remaining loss would be carry-forward for next 8 assessment years.	2,00,000	
Balance Carry-forward of House property loss	50,000	Nil
<b>Income from Business and Profession:</b>		
Income from Profession	8,00,000	
Less: Loss from house property (can be set-off to the extent of Rs. 2,00,000, as per section 71 (3A))	(2,00,000)	6,00,000
Loss from Speculation business of Share trading:	(1,10,000)	
Loss of Rs. 1,10,000 from speculation business only set-off against profit from another speculation business only. Here no other speculation profit, hence carry forward for next 4 assessment year.	1,10,000	Nil
<b>Income from Capital Gains:</b>		
Short term capital loss from equity shares under section 111A	(6,25,000)	
Less: Short term capital loss set off against long-term capital gain u/s 112A as per section 74	1,50,000	
Balance loss under the head of capital gain cannot be set-off against other head of income u/s 74. So, it would be carry- forward for next 8 assessment years.	4,75,000	Nil
Long term capital gain on sale of equity shares computed as per section 112A:	1,50,000	
Less: Short term capital loss set off against long-term capital gain as per section 74	(1,50,000)	Nil
<b>Income from Other Sources:</b>		
Interest from Canara bank received by Vernika on deposit made out of income earned from her dance performances [clubbed in the hands of Harish as per section 64(1A)]	15,000	
Less: Exemption in respect of income of minor child u/s 10(32)	(1500)	13,500
<b>Gross Total Income</b>		<b>6,13,500</b>

**Loss to be Carried Forward**

Particulars	Amount
Loss from house property can be set-off to the extent of Rs. 2,00,000, as per section 71(3A), hence remaining loss (2,50,000 - 2,00,000 = 50,000) would be carry-forward for next 8 assessment years	50,000
Loss from speculation business only set-off against profit from another speculation business only. Here no other speculation profit, hence carry forward for next 4 assessment year.	1,10,000
Short term Capital Loss which is not wholly set-off against other short-term or long-term capital gain, cannot be set-off against other head of income u/s 74. So, it would be carry-forward for next 8 assessment years.	4,75,000

**Answer 3(c)****Computation of Income from Other Sources of Anuradha for the A.Y. 2024-25**

Particulars	Amount
Amount received from LIC as a death benefit of her husband's insurance policy {Exempt u/s 10(10D)}	Nil
Winning from Horse race (gross)	70,000
Winning from online lotteries (Rs. 1,05,000/70 X 100)	1,50,000
Dimond Jewellery received as Gift from her father's sister (Father's sister is relative hence gift from relative is exempt)	Nil
Family Pension Received (Rs. 3,000 x 12) Rs. 36,000 Less: Exempt u/s 57(iia) (W.N. 1) Rs. (12,000) (1/3 of pension or Rs. 15,000 whichever is lower)	24,000
Rent received from Sub-letting of house property Rs. 2,40,000 Less: Rent paid for half portion Rs. (1,80,000) (Rs. 30,000 * 12 * ½)	60,000
Income from other sources	3,04,000

**Working Note 1:** As per latest amendment by Finance Act, 2023 Standard Deduction on family pension under the new tax regime is allowed subject to 15,000 or 1/3rd of the pension amount, whichever is lower.

**Attempt all parts of either Q. No. 4 or Q. No. 4A**

**Question 4**

- (a) How far is ownership of a business essential for considering the taxability arising from such business ? In case a business is tainted with illegality, can it be said that such income cannot be taxed, in view of the illegality involved ?
- (b) Briefly outline the procedural requirements relating to TDS returns which are required to be filed by a taxpayer who has deducted the TDS.
- (c) "Income of the previous year is assessable as the income of immediately following financial year." State any five exceptions to this rule.

(5 marks each)

**Answer 4(a)**

**Ownership of Business:**

The statement that ownership of business is essential for taxability of Income under the head "Profits and gains of business or profession" is incorrect.

It is not essential that to tax the income arising from a business, the assessee must be the owner thereof. Even where the assessee runs a business outsourced to him by the owner, he may be taxed in respect of the profits arising from such business.

It is not only the legal ownership, but also the beneficial ownership of the business, which has to be taken into consideration, to judge whether the profits and gains arising from such business is taxable.

**Taxability of income from Illegal Business:**

The proposition that "Income from illegal business cannot be taxed" is incorrect.

Legality or illegality of the business is immaterial to judge whether the income arising therefrom is taxable as business income. The person doing illegal business is punishable under another Act, is also not relevant in this regard.

**Answer 4(b)**

**TDS Returns under the Income-tax act, 1961 'the Act'**

Any person deducting any sum in accordance with the Act shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs. Further, quarterly TDS return is required to be filed by the assessee who has deducted the TDS. TDS return include fields like TAN, TDS payment, amount deducted, type of payment, PAN, etc.

Form No.	Particulars
Form 24Q	Statement for tax deducted at source from salaries.
Form 26Q	Statement for tax deducted at source on all payments except salaries.
Form 27Q	Statement for deduction of tax from interest, dividend, or any other sum payable to non-residents.

Form 26QB	For section 1941A separate return is not required, challan cum return to be filed on form 26QB to be deposited within a period of 30 days from the end of the month in which the deduction is made.
Form 26QC	TDS on Rent
Form 26QD	TDS u/s 194M

#### TDS Return Due Dates

Quarter	Period	TDS Return Due Date	TDS Return due date for Form 26QB/ 26QC/ 26QD
Quarter 1	April to June	31st July	30days from the end of the month in which TDS is deducted
Quarter 2	July to September	31st October	
Quarter 3	October to December	31st January	
Quarter 4	January to March	31st May	

The quarterly return statement should be accompanied by assigned verification in Form No.27A. Form 27A is control chart of quarterly TDS statement to be filed by debtors / collectors along with quarterly statement. It is a summary of TDS return which contains control totals of 'amount paid' and 'income tax deducted at source'.

#### Answer 4(c)

In the following situation, the Income of previous year of an assessee is assessed in the same previous year itself:

- i. **Income of Non-Resident from Shipping:** [Section 172]- A non-resident who is carrying on a shipping business and earns income at any port in India, shall be charged to tax before the ship is allowed to leave Indian Port.
- ii. **Income of persons leaving India either permanently or for long duration:** [Section 174]- When it appears to the Assessing Officer (A.O.) that an individual may leave India and has no intentions of returning back during an assessment year, then the income is charged to tax during the same Assessment year.
- iii. **Income of bodies formed for short duration:** [Section 174A]- When it appears to the Assessing Officer (A.O.) that any organization is formed for a particular event and is likely to be dissolved during the current assessment year
- iv. **Income of person trying to transfer his assets with a view to avoid tax:** [Section 175]- When it appears to the Assessing Officer (A.O.) that during the current assessment year any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets to avoid payment of any liability under this Act, the total income of such person for the period from the expiry of the previous year to the date, when the Assessing Officer commences proceedings under this section is chargeable to tax in that assessment year.
- v. **Income of Discontinued Business:** [Section 176]- Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year up to the date of such discontinuance may, at the discretion of the Assessing Officer, be charged to tax in that assessment year.

**OR (Alternative question to Q. No. 4)****Question 4A**

(i) In each of the following independent situations, you are required to examine whether these persons are mandatorily required to file income tax return for A.Y. 2024-25 :

(a) Ashwani, aged 55 years, has only Salary Income of ₹ 2,40,000 during the financial year 2023-24. Further, he withdraws cash of ₹ 35,00,000 from his saving account in Axis Bank out of his accumulated income of earlier years. Ashwani has not filed his income tax return in any of preceding three financial year.

(3 marks)

(b) Manish, aged 65 years, has retail trader of handicraft goods. His gross receipt during the financial year 2023-24 from such business is ₹ 25,00,000 and net profit from business is ₹ 2,75,000. He has no other income during the current financial year. Manish has regularly filed his income tax return from preceding three financial years.

(2 marks)

(ii) For the Financial year 2023-24 Gross Total Income of Dhruvan (Age 47) employed in Indian Air Force was ₹ 17,50,000, it includes long term capital gain on sale of house property ₹ 3,16,000. He has made the following payments and investments during the current financial year :

(i) Premium paid ₹ 35,000 to Max Life Insurance for the life of his major daughter (policy taken on 1.4.2022) (Sum assured value ₹ 1,70,000).

(ii) Five-year post-office time deposit - ₹ 52,000.

(iii) Donation to a public charitable institution registered under 80G ₹ 1,35,000 by way of online NEFT.

(iv) He contributed ₹ 22,500 to Agniveer Corpus Fund setup by Central Government, his employer also contributed the same amount of ₹ 22,500.

(v) Payment of tuition fees paid to Winsome School, Kolkata for education of his son studying in class X - ₹ 75,000.

Compute the total allowed deduction under chapter VI-A of Dhruvan for assessment year 2024-25, assuming that he has not opted for section 115BAC.

(5 marks)

(iii) Gajendra is working as a Sales Manager of Bansal Green Pvt. Ltd. He furnishes the following particulars of his remuneration for the previous year 2023-24 :

S. No.	Particulars	Amount (₹)
1.	Basic Salary	65,000 p.m.
2.	Dearness Allowance (40% is part of retirement benefit)	15,000 p.m.
3.	Medical Allowance	5,000 p.m.
4.	Children Education Allowance (for 2 children)	1600 p.m. per child

The company provided him a furnished accommodation in Chennai. The cost of the furniture

provided in this house is ₹ 1,50,000 and three air-conditioners, which have been taken on hire by the company, have also been provided in the accommodation. The hire charge of each air conditioner is ₹ 7,500 per annum. The fair rental value of such house is ₹ 15,000 per month. But the company charges him only ₹ 7,000 per month.

Compute the Taxable Value of rent-free accommodation of Gajendra included in Salary for the assessment year 2024-25. Assume that he does not opt to pay tax under section 115BAC.

(5 marks)

#### Answer 4A(i)

- (a) If an individual has aggregate TDS and TCS credit of Rs. 25,000 or more during the previous year, he would be required to file a return of income, even if his total income does not exceed the basic exemption limit.

In this case, TDS of Rs. 30,000 i.e., @ 2% on Rs. 15 lakhs, would have been deducted by Axis Bank under section 194N on cash withdrawal exceeding Rs. 20 lakhs by Ashwani during the P.Y. 2023-24 (due to non-filing of return in all the three preceding financial years)

Hence, Ashwani is mandatory required to file his return of income for A.Y. 2024-25 on or before the due date under section 139(1) of the Income Tax Act, 1961.

- (b) If a person other than a company or firm whose total income before claiming the deduction under chapter VI-A does not exceed the maximum amount which is not chargeable to income-tax, are not mandatory required to file return of income under section 139(1) of the Income Tax Act, 1961.

In the given case, Manish is senior citizen and his total income is 2,75,000 only, which is below the exemption limit of Rs. 3,00,000.

Hence, Manish is not mandatory required to file return of income for A.Y. 2024-25 on or before due date under section 139(1).

#### Answer 4A(ii)

##### Computation of Total allowed deduction under chapter VI-A for A.Y. 2024-25

Particulars	Amount	Amount
<b>(i) Deduction under section 80C</b>		
Life insurance premium paid for insurance of his major daughter (Maximum 10% of sum assured value, i.e. Rs. 1,70,000 X 10% = Rs. 17,000)	17,000	
Five-year post-office time deposit	52,000	
Payment of tuition fees for son paid to Winsome School	75,000	
Total Deduction under section 80C -		1,44,000
<b>(ii) Deduction under section 80CCH(I)</b>		
Employee's contribution to Agniveer Corpus Fund		22,500
<b>(iii) Deduction under section 80CCH(2)</b>		
Employer's contribution to Agniveer Corpus Fund		22,500

<b>(iv) Deduction under section 80G</b>		
Donation to a public charitable institution registered under 80G (Subject to maximum of 50% of Rs. 1,24,500) (W.N. 1)		62,250
<b>Total Deduction under chapter VI-A</b>		<b>2,51,250</b>

**Working Note 1:**

Donation to a registered public charitable institution is eligible for 50% deduction subject to qualifying limit. In this case qualifying limit for availing deduction under section 80G is restricted to 10% of adjusted gross total income.

Adjusted gross total income means = Gross total income - LTCG - STCG u/s 111A - all deductions except 80G.

Therefore, adjusted total income is Rs. 12,45,000 (i.e., Rs. 17,50,000 – Rs. 3,16,000 – Rs. 1,44,000 – Rs. 22,500 – Rs. 22,500), 10% of adjusted total income is Rs. 1,24,500.

Hence, the deduction under section 80G would be Rs. 62,250 (i.e., 50 % Rs. 1,24,500)

**Answer 4A(iii)**

Computation of Taxable value of Rent-free concessional accommodation facility for A.Y. 2024-25

S. No.	Particulars	Amount
(i)	15% of income from Salary (for first 5 month) (Rs. 9,48,000/12 * 5 * 15%)	59,250
(ii)	10% of Income from Salary (for next 7 month) (w.e.f. 1-9-2023, value of house facility is 10% of salary, if accommodation provided in city having population exceed 40 lacs) (Rs. 9,48,000/12 * 7 * 10%)	55,300
	Total Value	1,14,550
	Add: 10% of cost of furniture (Rs. 1,50,000 x 10%)	15,000
	Add: Hire charge of A.C (Rs. 7,500 x 3)	22,500
	Total Value of Rent-free concessional house facility	1,52,050
	Less: Amount paid by Employee (Rs.7,000 x 12)	(84,000)
	Taxable value of Rent-Free house facility	68,050

**Working Note:****Meaning of Salary for Rent Accommodation Facility**

Particulars	Amount
Basic Salary (Rs. 65,000 x 12)	7,80,000

Add: D.A. (part of retirement benefit) (Rs. 15,000 x 12 x 40%)	72,000
Add: Medical Allowance (fully taxable) (Rs. 5,000 x 12)	60,000
Add: Children Education Allowance (Rs. 1600 x 2 x 12)      Rs. 38,400	
Less: Exempt (Rs. 100 x 2 x 12) Rs. 2,400	36,000
Salary for the purpose of Rent-Free Accommodation	9,48,000

## PART-II

### Question 5

VVIP Global Limited registered supplier of Maharashtra has provided the following details for the supply of one machine :

S. No.	Particulars	Amount (₹)
1	List price of Machine supplied	1,20,000
2	Cost of protective Packing for safe transportation of machine charged separately in the invoice	15,000
3	Maintenance Charges compulsory for first year (not included in above list price)	20,000
4	Installation charges of machinery (not included in above list price)	2,500
5	Third party Inspection charges (these charges are not recorded in the invoice; these charges are directly paid by buyer to third party inspection agency)	4,000
6	Price link subsidy received from Government of Maharashtra in relation to Supply of such machinery (The price of ₹ 1,20,000 above is after considering the subsidy of ₹ 30,000)	30,000
7	Tax Levied by Local Authority on sale of such machine (not included in above list price)	3,500

During the month of March, 2024 VVIP Global Limited supplied three machines in the state of Maharashtra and one machine in the state of Gujarat to the registered dealers.

The aggregate annual turnover of the company during the financial year 2022-23 was ₹ 8 crore. However aggregate annual turnover of current financial year 2023-24 was ₹ 4 crore only.

VVIP Global Limited also purchased some machines from registered dealer as well as unregistered dealer during the month of March, 2024. The details of inward supplies during the month of March, 2024 were as follows :

S. No.	Particulars	Amount (₹)
1	Two Machines purchased from a Dealer who is registered under Regular Scheme in the state of Uttar Pradesh (each machine value ₹ 75,000)	1,50,000
2	One Machine purchased from a Dealer who is registered under Composition Scheme in the state of Maharashtra	76,000
3	One Machine purchased from Moon Limited registered under Regular Scheme in the state of Gujrat (Invoice is received and payment is made in the month of March, 2024 but Machine is received in the month of April, 2024)	68,000
4	Insurance charges, paid to XYZ Insurance Company registered in Pune (Maharashtra) for trucks used for transportation of Machinery for two years (Insurance Premium ₹ 60,000 per year)	1,20,000

Balance available in electronic credit ledger of VVIP Global Limited at the beginning of March, 2024 :

CGST	₹ 15,000
SGST	₹ 10,000
IGST	₹ 5,000

**Additional Information :**

- (1) On 26 March, 2024 Moon Limited transported above mentioned one machine to VVIP Global Limited by road, the distance between registered places of business from Moon Limited to VVIP Global Limited is 375 kilometers.
- (2) Rate of CGST, SGST and IGST to be charged 9%, 9% and 18% respectively.
- (3) Both inward and outward supplies given above are exclusive of taxes, wherever applicable.
- (4) All the conditions necessary are availing the ITC have been fulfilled except mentioned above.

Based on the above case scenario and information, you are required to answer the following questions with reference to GST Law :

- (a) Compute the Taxable Value of Supply of each machine for the month of March, 2024 for VVIP Global Limited.
 

(4 marks)
- (b) Compute the Input Tax Credit available for the month of March, 2024 for VVIP Global Limited.
 

(4 marks)
- (c) Compute the Output Tax Liability for the month of March, 2024 for VVIP Global Limited.
 

(3 marks)
- (d) Is e-way bill required to be generated by Moon Limited ? Also calculate the validity period

of e-way bill under rule 138(10) of CGST Rules, 2017 for transport of one machine from Moon Limited to VVIP Global Limited, if such machine is transported from over dimensional cargo.

(3 marks)

- (e) Whether issue of e-invoice is mandatory in respect of supply made by VVIP Global Limited during the month of March, 2024 ? Also explain the provision relating to requirement of issue e-invoice.

(3 marks)

- (f) VVIP Global Limited wants to opt QRMP scheme for next financial year from 1st April, 2024. Is it possible ? Explain the condition and restrictions of QRMP Scheme.

(3 marks)

### Answer 5(a)

#### Computation of Taxable Value of Supply

Particulars	Amount
List price of Machine supplied	1,20,000
Cost of protective Packing for safe transportation of machine charged separately in the Invoice (Included in Value of supply as per section 15)	15,000
Maintenance Charges (Included in Value of supply as per section 15)	20,000
Installation charges of machinery (Included in Value of supply as per section 15)	2,500
Third party Inspection charges (Included in Value of supply as per section 15)	4,000
Subsidy received from State Government in relation to supply of such machinery. (Subsidy from State Govt. or Central Govt., are not includible in the value of supply u/s 15)	--
Tax Levied by Local Authority on sale of such machine (Tax other than GST, if charged separately, are includible in the value in terms of section 15]	3,500
Value of taxable supply	1,65,000

**Answer 5(b)****Computation of Input Tax Credit available for the month of March, 2024**

Particulars	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
Opening balance of ITC	15,000	10,000	5,000
ITC on Machines Purchased inter-state from registered dealer under Regular Scheme (IGST allowed @ 18% each on 1,50,000)	-	-	27,000
ITC on Machine Purchased from Composition Dealer (ITC is not allowed for Goods purchased from Composition dealer)	-	-	-
ITC on Machines Purchased from Moon Limited (ITC is not allowed, because Machinery is not received in the month of March 2024)	-	-	-
ITC on Insurance charges paid for trucks used for transportation of Machinery (Rs. 1,20,000 X 9%) (ITC is allowed on insurance services relating to motor vehicles used for transportation of goods for business use)	10,800	10,800	-
Total ITC Available	25,800	20,800	32,000

**Answer 5(c)****Computation of Output Tax Liability for the month of March, 2024**

Particulars	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
Output GST on Sale of machine (Intra- State) 3 Machine - (Rs. 1,65,000 x 3 x 9%)	44,550	44,550	-
Output GST on Sale of machine (Inter- State) 1 Machine - (Rs. 1,65,000 x 18%)	-	-	29,700
Total Output Tax Liability	44,550	44,550	29,700

**Answer 5(d)**

Yes, e-way bill is required to be generated for the transportation of goods of value Rs. 50,000 or more. In the given case, value of machine is Rs. 1,65,000, hence e-way bill is required to be generated.

The validity period of e-way bill under rule 138(10) of the CGST Rules, 2017 for transport of cargo by road between two cities situated at a distance of 375 km is as under:

If it is over dimensional cargo: The validity period of the e-way bill is one day from relevant date upto 20 km and one additional day for every 20 km or part thereof thereafter.

(The period is calculated from midnight of the day immediately following the date of generation of e-way bill)

Thus, validity period in given case:

= 1 day + 18 days

= 19 days

i.e. 26<sup>th</sup> March, 2024 + 19 days = i.e. midnight of 14<sup>th</sup> April, 2024

### Answer 5(e)

All registered businesses with aggregate turnover in any preceding Financial Year greater than Rs. 10 crore (upto 31-7-2023) or greater than Rs. 5 crore (w.e.f. 01-08-2023) are mandatorily required to issue e-invoices for all B2B invoices

In the given case, aggregate annual turnover of VVIP Global Limited during the financial year 2022-23 was Rs. 8 crore which is exceed the limit of 5 crore. Thus, issuance of e-invoice is mandatory in respect of the given transaction as all the supply made to registered dealer (i.e. B2B transaction).

### Answer 5(f)

Yes, VVIP Global Limited is eligible to opt QRMP scheme for next FY for 2024-25.

Condition and restrictions of ORMP Scheme:

- Aggregate annual turnover (PAN based) does not exceed Rs. 5 crore in the preceding financial year.
- Facility to avail the QRMP scheme is available at common portal throughout the year. Registered person intending to opt for QRMP scheme for any quarter shall indicate his preference for furnishing of return on a quarterly basis from 1st day of the 2nd month of the preceding quarter till the last day of the 1st month of the quarter for which the option is being exercised.
- Assessee has furnished the return for the preceding month, as due on the date of exercising such option.
- Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax period, unless they revise the said option.

### **Attempt all parts of either Q. No. 6 or Q. No. 6A**

#### Question 6

- (a) Anupam Singh a trader of Himachal Pradesh, provides the following information for the financial year 2023-24

Particulars	Amount (₹)
Intra-state outward supplies of Goods taxable under forward charge	22,00,000
Intra-state outward supplies of Service on which tax is payable under reverse charge mechanism	11,00,000
Value of Exports supplies	12,00,000

Intra-state outward supplies which are chargeable to GST at Nil Rate	18,50,000
Inter-state outward supply which are wholly exempt (it includes Rs. 2.5 lakh received as interest on delay payment from customer)	27,50,000

All the above amounts are exclusive of GST.

You are required to find out the aggregate turnover for the purpose of eligibility of composition levy scheme and determine whether he is eligible for composition levy scheme or not, for the financial year 2024-25.

(5 marks)

(b) Preetam, a registered supplier of Kota (Rajasthan), has made the following supplies in the month of July, 2024 :

- (i) Supply of a laptop bag along with the laptop to a customer of Mumbai for ₹1,70,000 (exclusive of GST).
- (ii) Supply of sweets @ ₹500 per KG in a box. Cost of each box is ₹20 per box. In order to increase his turnover Preetam did not charge the amount of box from customer. During the month of July, 2024, he sold 140 boxes of 1 KG sweet to local customers in Kota.
- (iii) Supply of 2,000 kits (at ₹75 each) amounting to ₹1,50,000 (exclusive of GST) to Kamal Fancy Store in Jodhpur (Rajasthan). Each kit consists of 1 hair oil, 1 beauty soap and 1 hair comb.
- (iv) 250 kits are given as free gift to Udaipur customers on the occasion of Preetam's wife birthday. Each kit consists of 1 hair oil and 1 beauty soap. Cost of each kit is ₹ 40, but the open market value of such kit of goods and of goods of like kind and quality is ₹ 50. Input tax credit has not been taken on the goods contained in the kit.

Assume the GST Rate on Laptop is 18%, Laptop bag 28%, Sweet 5%. Empty Box 18%, Hair Oil 18%, Beauty soap 28%, Hair comb 12%. From the above information, compute the GST liability (CGST or SGST or IGST) of Preetam for the month of July, 2024.

(5 marks)

(c) From the following information determine the time of supply of Service under CGST Act, 2017, assuming that GST is payable under reverse charge mechanism (RCM) in each case :

S. No.	Date of Invoice issued by supplier	Date of Completion of service	Date of payment entered in books of recipient	Date of payment debited in bank account
1.	23.04.2024	21.04.2024	13.07.2024	15.07.2024
2.	23.04.2024	21.04.2024	24.06.2024	22.06.2024
3.	23.04.2024	21.04.2024	03.06.2024	04.06.2024
4.	23.04.2024	24.04.2024	19.04.2024	18.04.2024
5.	23.04.2024	24.04.2024	Not done	Not done

(5 marks)

(d) Kapil Gems Importers imported a machine with accessories from UK. Compute the customs duty payable thereon from the following information :

- (i) CIF value of machine (inclusive of accessories) UK Pound 25,000.
- (ii) CIF value of accessories compulsorily supplied along with the machine (not shown separately) UK Pound 1,500.
- (iii) Bill of entry filed on 02-06-2024 on this date Rate of BCD is 10%; and currency exchange rate as notified by CBIC ₹ 108 per UK Pound.
- (iv) Date of entry inward 05-06-2024 on this date Rate of BCD is 12%; and currency exchange rate as notified by CBIC ₹ 110 per UK Pound.
- (v) Rate of Social Welfare Surcharge (SWS) is 10%.
- (vi) Integrated tax payable u/s 3(7) of the Customs Tariff Act, 1975 is 18%.
- (vii) There is no GST compensation cess and other charges.

(5 marks)

### Answer 6(a)

#### Computation of Aggregate turnover for composition levy scheme

Particulars	Amount
Intra-state outward supplies of Goods taxable under forward charge	22,00,000
Intra-state outward supplies of Service on which tax is payable under reverse charge mechanism (included)	11,00,000
Value of Exports supplies	12,00,000
Intra-state outward supplies which are chargeable to GST at Nil Rate	18,50,000
Inter-state outward exempted supply (Amount received as interest on delay payment from customer Rs. 2.5 lakh is also included in Value of Supply under section 15 of CGST Act, 2017, hence included for calculating aggregate turnover)	27,50,000
Aggregate Turnover	91,00,000
Since the Aggregate turnover in the specified State of Himachal Pradesh does not exceed the limit of Rs. 1.5 crores during the financial year 2023-24. So, Mr. Anupam Singh is entitled for Composition Scheme u/s 10(1) for the financial year 2024-25.	

**Answer 6(b)****Computation of GST liability of Preetam for the month of July, 2024**

Particulars	Amount (Rs.)	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
(i) Supply of laptop bag along with laptop: [Supply of laptop bag along with the laptop is a composite supply, Tax Rate is taken on principal supply of goods. i.e. Laptop and IGST @ 18%	1,70,000	-	-	30,600
(ii) Supply of sweet along with box: Price of box is not charge separately from customer; hence Tax Rate is taken on principal supply i.e. sweet and CGST and SGST @ 2.5% each will be charged] (500 x 140 x 2.5%)	70,000	1,750	1,750	-
(iii) Supply of kits of hair oil, beauty soap and hair comb: [It is a mixed supply; Rate of GST is taken on supply of that particular supply which attracts highest tax rate. It's an intra-state supply. Accordingly, CGST and SGST @ 14% each will be charged.]	1,50,000	21,000	21,000	-
(iv) Free gifts to customers cannot be considered as supply under section 7 read with Schedule I of the CGST Act as the gifts are given to unrelated customers without consideration and ITC has not been taken]	Nil	-	-	-
<b>Total GST Liability for the Month of July, 2024</b>		<b>22,750</b>	<b>22,750</b>	<b>30,600</b>

**Answer 6(c)****Computation of Time of Supply**

Sl. No.	Date of Payment entered in books	Date of Payment debited in bank	61st day from the Issue of Invoice	Time of Supply (whichever is earlier)	Reason
1.	13.07.2024	15.07.2024	23.06.2024	23.06.2024	Date of payment as entered in the books of account or payment is debited in his bank account or 61st day from the issue of Invoice, whichever is earlier
2.	24.06.2024	22.06.2024	23.06.2024	22.06.2024	Date of payment as entered in the books of account or payment is debited in his bank account or 61st day from the issue of Invoice, whichever is earlier

3.	03.06.2024	04.06.2024	23.06.2024	03.06.2024	Date of payment as entered in the books of account or payment is debited in his bank account or 61st day from the issue of Invoice, whichever is earlier
4.	19.04.2024	18.04.2024	23.06.2024	18.04.2024	Date of payment as entered in the books of account or payment is debited in his bank account or 61st day from the issue of Invoice, whichever is earlier
5.	-	-	23.06.2024	23.06.2024	Date of payment as entered in the books of account or payment is debited in his bank account or 61st day from the issue of Invoice, whichever is earlier

**Answer 6(d)****Computation of custom duty payable by Kapil Gems Importers**

Particulars	Amount (Rs.)
CIF value of machine (inclusive of accessories)	UK Pound 25,000
Assessable Value in Indian currency (currency exchange rate is taken on the date of bill of entry, i.e. 1 UK Pound = 108) (25,000 x 108)	27,00,000
Add: Basic Custom Duty (Rate of duty is taken on bill of entry or entry inward whichever is later) @ 12% of Rs. 27,00,000	3,24,000
Add: Social welfare surcharge @ 10% on basic custom duty (10% of Rs. 3,24,000)	32,400
Total	30,56,400
Add: IGST @ 18% of Rs. 30,56,400	5,50,152
Total Amount Payable	36,06,552
Total Duty Payable (Rs. 3,24,000 + Rs. 32,400 + Rs. 5,50,152)	9,06,552

**OR (Alternative question to Q. No. 6)****Question 6A**

(i) With reference to GST law, determine the place of supply with reasons in the following independent circumstances :

(a) TJ Mart is a famous super market, a registered supplier in Hubli, Karnataka. On 18th March, 2024, Kunal, a walk-in-customer not registered under the GST law, has purchased

goods and has arranged for transport of these to Maharashtra. The practice of the taxpayer is not to record the full address of walk-in-customers, but to issue cash invoice for the supply.

- (b) HJ Bank, Trivandrum Branch, Kerala, having core banking services, has issued two demand drafts (DD) to two customers and has collected GST from them : One J, located at Chennai, an existing customer of Chennai branch, and K, a walk-in-customer.

(5 marks)

- (ii) Explain the term "specified actionable claim", under section 2(102A) of CGST Act, 2017. Whether the activity of "specified actionable claim" will be treated as a supply under GST Law or not ?

(5 marks)

- (iii) Who is required to be issue Credit Note under GST. List out any three situations in which credit note may be issued under the CGST Act, 2017. What is the maximum time limit available for declaring the credit note in the GST Return ?

(5 marks)

- (iv) Examine whether the supplier of goods is liable to get registered under section 24 of CGST Act, 2017 in the following independent cases :

- (a) Sunil Kumar of Mumbai is exclusively engaged in intra-State taxable supply of readymade garments. His turnover in the current financial year from Maharashtra showroom is ₹ 25 lakh. He has another showroom in Sikkim with a turnover of ₹ 12 lakh in the current financial year.

(3 marks)

- (b) Keshav Pan Bhandar of Varanasi (Uttar Pradesh) is exclusively engaged in intra-State supply of pan masala. His aggregate turnover in the current financial year is ₹ 39 lakh.

(2 marks)

### Answer 6A(i)

#### Place of supply

- (a) As per the IGST (Amendment) Act, 2023, where supply is made by a registered person to an unregistered person, the place of supply shall be the address as recorded in the invoice and where no address is recorded, the location of the registered person.

Hence in the given situation, the place of supply will be Karnataka. The goods were moved to Maharashtra, is immaterial.

- (b) Where a bank has supplied goods to a customer, the place of supply will be as per the records of the bank. In case there is no record pertaining to such customer, the place of supply will be the location of the registered office of the bank.

Since Mr. J is an existing customer and his address is available with the bank, the place of supply will be the location of the customer. Hence it will be Tamil Nadu (Chennai).

Mr. K being a walk-in-customer, since there will be no records, the place of supply will be Kerala (Trivandrum Branch).

### Answer 6A(ii)

Section 2(102A) "specified actionable claim" means the actionable claim involved in or by way of-

- i. betting;
- ii. casinos;
- iii. gambling;
- iv. horse racing;
- v. lottery; or
- vi. online money gaming

Earlier, as per Entry 6 of Schedule III, actionable claims other than betting, gambling and lottery were outside the purview of GST. It should not be treated as supply.

But with effect from 01.10.2023 entry 6 of Schedule III has been amended as follows: Actionable claims, other than specified actionable claims we outside the purview of GST.

Hence, w.e.f. 1-10-2023 specified actionable claims qualify as supply and taxable under GST @ 28%.

### **Answer 6A(iii)**

Credit note is required to be issued by Supplier.

Situations in which credit note may be issued under the CGST Act, 2017:

- i. If taxable value charged in the tax invoice is found to exceed the taxable value in respect of supply of goods and/or services, or
- ii. If tax charged in the tax invoice is found to exceed the tax payable in respect of supply of goods and/or services, or
- iii. If goods supplied are returned by the recipient, or
- iv. If goods and/or services supplied are found to be deficient.

A registered person who issues such a credit note has to declare details of such credit note in the return for the month during which such credit note has been issued but not later than 30<sup>th</sup> November of the following financial year or the date of furnishing of the relevant annual return, whichever is earlier.

### **Answer 6A(iv)**

- (a)** The Aggregate annual turnover limit for GST Registration in case of intra-state supply of goods in the State of Maharashtra is Rs. 40 lakh and intra-state supply of goods in the state of Sikkim is Rs. 20 lakhs.

However, since Sunil Kumar is engaged in supplying readymade garments from the state of Maharashtra and Special Category State i.e., Sikkim, the threshold limit gets reduced to Rs. 20 lakhs.

Thus, Sunil Kumar is liable to get registered in both the state under GST as his aggregate annual turnover is Rs. 37 lakh (25+12), which has exceeded the limit of Rs. 20 lakhs.

- (b)** Keshav Pan Bhandar being exclusively engaged in supply of pan masala is not eligible for higher threshold limit of Rs. 40 lakhs. The applicable threshold limit for registration in this case is Rs. 20 lakhs.

Since the aggregate annual turnover is Rs. 39 lakhs. Hence Keshav Pan Bhandar is liable to get registered under GST.

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