

# **GUIDELINE ANSWERS**

## **EXECUTIVE PROGRAMME**

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**GROUP 1**



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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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# JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

## GROUP 1 PAPER 1

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### Question 1

- (a) Indian Constitution is considered as federal Constitution. There is distribution of powers between Union and States regarding enactment of Laws. Both authorities are independent of each other.

Indian Constitution covers the legislative relationship between the Union and State. The Union legislature, i.e., Parliament has the power to make laws for the whole of the territory of India or any part thereof, and the state legislature have the power to make laws for the whole or any part of the territory of the respective State. In distributing the subject on which legislation can be made, the Indian Constitution draws three long lists of all the conceivable legislative subjects. These lists are contained in the 7th schedule to the Constitution. List I is named as the Union List. List II as the State List and III as the Concurrent list. Each list contains a number of entries in which the subjects of legislation have been separately and distinctly mentioned. Legislative function is done by the parliament or state legislature for their respective subjects through passing the bills. Legislature is empowered to make laws but it shall not make any law which takes away or abridges the fundamental rights. It shall be void to the extent to which it curtails any such right. Laws which were in force before the commencement of the Constitution are void to the extent to which they are inconsistent with the fundamental right. In reference to the above statements answer the following questions :

- (i) Rajasthan Government passed an Act restricting the use of sound amplifiers. The Act is challenged on the ground that it dealt with a matter which fell in entry of list I (Union list) which reads "post and telegraphs, telephones, wireless broadcasting and other like forms of communication" therefore state cannot make law. Decide with applicable rule.

(2 marks)

- (ii) Explain the term "judicial review"

(2 marks)

- (iii) What do you understand by bill ?

(2 marks)

- (iv) Procedurewise, what are the types of bills.

(2 marks)

- (v) What does the word 'law' include according to Article 13 of the Indian Constitution ?

(2 marks)

- (b) The liability of the Government can either be contractual or tortious. The Constitution of India allows the central and the state government to enter into contracts under Article 299 of the Constitution of India.

Article 299 (2) of the Constitution makes it clear that neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of the Constitution or for the purposes of any enactment relating to the Government of India. Subject to the provision of Article 299(1), the other provisions of the general law of contract apply even to the Government contract. According to Section 70 of the Indian Contract Act, 1872, where a person lawfully does anything for another person or delivers anything to him such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore, the thing so done or delivered.

It may happen that a public servant may be negligent in exercise of his government duty. It may be difficult to recover compensation from him. From the point of the aggrieved person, compensation is more important than punishment.

In reference to the above statements, answer the following questions :

- (i) A contract with the Government of Union or State will be valid and binding only if certain conditions are followed. Explain. (3 marks)
  
- (ii) State the effects of a valid contract with Government. (2 marks)
  
- (iii) Will Government be liable to pay compensation, if the requirement of Section 70 of the Indian Contract Act, 1872 are fulfilled ? Explain. (2 marks)
  
- (iv) Is the state vicariously liable for the wrongful acts of its servants ? Explain. (3 marks)

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

The facts of the given situation are similar to the case of *G. Chawla v. State of Rajasthan*, AIR 1959 SC 544. The Rajasthan Legislature passed a law restricting the use of sound amplifiers. The law was challenged on the ground that it dealt with a matter which fell in entry 31 of List I which reads: "Post and telegraphs, telephones, wireless broadcasting and other like forms of communication", and, therefore, the State Legislature was not competent to pass it. The Supreme Court rejected this argument on the ground that the object of the law was to prohibit unnecessary noise affecting the health of public and not to make a law on broadcasting, etc. Therefore, the pith and substance of the law was "public health" and not "broadcasting".

Therefore, in the given situation, the pith and substance rule can be applied. According to this rule, where a law in reality and substance falls within an entry on which the legislature which enacted that law is competent to legislate, then such law shall not become invalid merely because it incidentally touches a matter outside the competence of legislature.

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

Judicial review is the authority of Courts to declare void the acts of the legislature and executive if they are found in violation of provisions under Part-III of the Constitution of India. Judicial Review is the power of the highest Court of a jurisdiction to invalidate on Constitutional grounds, the acts of other Government agencies within that jurisdiction.

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

A Bill is a draft statute which becomes law after it is passed by both the house of parliament or

State legislature and assented to by the President or Governor. All legislative proposals are brought before parliament or State legislature in the forms of Bills.

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

Procedurally, the Bills can be classified as:

1. Ordinary Bills
2. Money and Financial Bills
3. Ordinance Replacing Bill and
4. Constitution Amendment Bills.

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

The word 'law' according to the definition given in Article 13 of the Constitution includes - "any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India, the force of law."

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

A contract with the Government of the Union or State will be valid and binding only if the following conditions are followed:

1. The contract with the Government must be made in the name of the President or the Governor, as the case may be.
2. The contract must be executed on behalf of the President or the Governor of the State as the case may be. The word executed indicates that a contract with the Government will be valid only when it is in writing.
3. A person duly authorised by the President or the Governor of the State, as the case may be, must execute the contract.

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

As soon as the contract is executed with the Government in accordance with Article 299 of the Constitution of India, the whole law of contract as contained in the Indian Contract Act, 1872 comes into operation. In India, the remedy for the breach of a contract with Government is simply a suit for damages.

Further, writ of mandamus can be issued for the enforcement of contractual obligations (*Gujarat State Financial Corporation v. Lotus Hotels*, 1983 3 SCC 379).

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

Section 70 of the Indian Contract Act, 1872 enables a person who actually supplies goods or renders some services not intending to do gratuitously, to claim compensation from the person who enjoys the benefit of the supply made or services rendered. Section 70 is not based on any subsisting contract between the parties but is based on quasi-contract. If the requirements of Section 70 are fulfilled even the Government becomes liable to pay compensation for the work actually done or services rendered by the State.

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

Like all other employers the State should also be made vicariously liable for the wrongful acts of its servants. The Court in India are conscious about increasing cases of excesses and negligence on the part of the administration resulting in the negation of personal liberty. Hence, they are coming

forward with pronouncement holding the Government liable for damages even in those cases where the plea of sovereign function could have negated the governmental liability.

In view of the above, it can be said that state is also vicariously liable for the wrongful acts of its servants.

### Question 2

(a) Water supply to A's mill was disrupted due to B's digging of his well. This resulted in the cutting of the water supply to the A's mill, due to which it was shut down. A filed a suit for damages against B in a court of law. Decide and give reasons for your conclusions.

(5 marks)

(b) X filed a suit to recover possession of a movable property against Y. During the hearing, X alleged that Y may dispose of the property to his benefit. If you are a presiding officer of a court how you will decide the case? Give reasons for your conclusions.

(5 marks)

(c) There were two contracts—one between the principal and contractor and another between contractor and sub-contractor. On completion of work, the sub-contractor demanded money for the completion of work and on non-payment filed a criminal complaint alleging that the contractor having received the payment from the principal had misappropriated the money. What kind of offense has been committed by the contractor? Also, define and elucidate the essential ingredients of criminal misappropriation of property.

(5 marks)

### Answer 2(a)

The given situation comes in the bracket of *Damnum Sine Injuria*. *Damnum* means harm, loss or damage in respect of money, comfort, health, etc. *Injuria* means infringement of a right conferred by law on the plaintiff. The maxim means that in a given case, a man may have suffered damage and yet have no action in tort, because the damage is not to an interest protected by the law of torts. Therefore, causing damage, however substantial to another person is not actionable in law unless there is also a violation of a legal right of the plaintiff.

In **Gloucester Grammar School Case**, defendant after leaving Plaintiff's School where he worked as a teacher, started his own school. Being a teacher of standing, many students of Plaintiff's school left and enrolled themselves into the defendant's school. The plaintiff filed a suit for monetary damages incurred by his own. The court held that the defendant is not liable because competition is no ground of action even though monetary loss is caused.

In case of **Chasemore v. Richards, 1859**, water supply to Plaintiff's mill was disrupted due to defendant's digging of his well. This resulted in cutting of water supply to plaintiff's mill due to which it was shut down. Court held defendant not liable because although monetary losses were incurred there was no violation of legal right.

In view of the above mentioned principle and case laws, it can be said that B is not liable to pay because although monetary might have been incurred but there was no violation of legal right.

### Answer 2 (b)

As the presiding officer of the court, I would carefully consider X's suit to recover possession of the movable property against Y, along with the allegation that Y may dispose of the property to his benefit. In such cases, the issuance of a temporary injunction or stay order can be crucial to prevent the alleged wrongful disposal of the property.

It is necessary to refer to the following points:

**A. The case of *Dalpat Kumar and Ors. vs. Prahlad Singh and Ors. (16.12.1991 - SC) : AIR 1993 SC 276***

In this case, Court held that three main requirements are to be satisfied while granting a temporary injunction:

1. There should be a Prima facie case
2. If an injunction is not granted, it would lead to irreparable loss and,
3. Balance of convenience.

It was stated by the Court that:

“Satisfaction that there is a prima facie case by itself is not sufficient to grant the injunction. The Court further has to satisfy that non-interference by the Court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant the injunction and he needs protection from the consequences of apprehended injury or dispossession. The third condition also is that “the balance of convenience” must be in favor of granting an injunction.

**B. Provision relating to Power to order interim sale**

As per Rule 6 of Order XXXIX, the Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural delay, or which for any other just and sufficient cause, it may be desirable to have sold at once.

After analyzing the facts and circumstances of the case, I am likely to give necessary relief as per the above mentioned discussion.

**Answer 2(c)**

Section 403 and 404 of the Indian Penal Code, 1860 (IPC) provides the provisions related to criminal misappropriation of property. The provision relevant to the given situation is section 403. According to section 403, whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The facts of the given situation are similar to the case of *U. Dhar v. State of Jharkhand, (2003) 2 SCC 219*, where the Supreme Court observed that the matter was of a civil nature and the criminal complaint was not maintainable and was liable to be quashed. The Supreme Court also observed that money paid by the principal to the contractor was not money belonging to the complainant, sub-contractor, hence there was no question of misappropriation.

In view of the provision and case law discussed above, it can be said that no offense has been committed.

**Essential Ingredients of Criminal Misappropriation of Property**

Dishonestly is an essential ingredient of the offense of Dishonest Misappropriation of Property and IPC provides that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that ‘dishonestly’. Misappropriation means the intentional, illegal use of the property or funds of another person for one’s own use or other unauthorized purpose. There are two things necessary before an offence under section 403 can be established. Firstly, that the property must be misappropriated or converted to the use of the accused, and, secondly, that he must misappropriate or convert it dishonestly.

### Question 3

- (a) X pledges his bike to Y for 1 lakh rupees. Y unlawfully sold the bike to Z before the lapse of the loan period. X sues Z for possession of his bike, without paying the loan amount even after expiring the time fixed for repayment of the loan. Decide and give reasons. Also, enumerate the provisions related to the recovery of specific movable property.
- (b) L, a singer, agreed to sing at M's theatre for a certain period and not to sing anywhere else during that period. Afterward, L entered into a contract to sing at another theatre and refused to perform the contract with M. M sued for specific performance of the contract and prohibitory injunction from singing in another theatre. Will M succeed? Decide and give your reasons to the conclusions.
- (c) A buys land for ₹ 2.50 Crore from B in Delhi. A and B executed the sale deed but didn't register it from the Sub-Registrar. After entering into the sale deed, it came into knowledge of A that some dispute was pending pertaining to the land. Can A file a suit before the court of law? Give reasons.

(5 marks each)

### Answer 3(a)

Sections 7 and 8 of the Specific Relief Act, 1963 provide the provisions relating to recovery of specific movable properties.

As per Section 7, a person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

*Explanation 1.* – A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.

*Explanation 2.* – A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

Section 8 provides that any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases: -

- (a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;
- (b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;
- (c) when it would be extremely difficult to ascertain the actual damage caused by its loss;
- (d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

*Explanation* - Unless and until the contrary is proved, the court shall, in respect of any article of movable property claimed under clause (b) or clause (c) above, presume-

- (a) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or, as the case may be;
- (b) that it would be extremely difficult to ascertain the actual damage caused by its loss;

In view of above mentioned provisions, it can be said that "X" has not repaid the loan, therefore, he is not entitled for the possession.

**Answer 3(b)**

Section 14 of the Specific Relief Act, 1963 (SRA) lays down the provisions relating to contracts which cannot be specifically enforced. The following contracts cannot be specifically enforced, namely:-

- (a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;
- (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;
- (c) a contract that is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and
- (d) a contract that is in its nature determinable.

**Injunction to perform negative agreement**

Section 42 of SRA provides that notwithstanding anything contained in section 41(e), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement. It may be noted that the plaintiff has not failed to perform the contract so far as it is binding on him.

There are two questions involved in the problem in given situation -

1. Can M succeed for specific performance of the Contract?
2. Can M succeed in getting injunctions restraining L to sing at any theatre?

There are two parts to the agreement. Positive one on the part of L to perform at M's theatre and the negative one on the part of L not to perform at any theatre other than that of M.

The court may in terms of section 42, prevent the breach of the negative part of the agreement i.e. not to sing at any other theatre by issuing a prohibitory injunction. However, obtaining specific performance of contract may not be possible due to section 14.

**Answer 3(c)****Consequences of non-registration of documents required to be registered compulsorily**

Section 49 of the Registration Act, 1908 provides that no document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall:

- (a) affect any immovable property comprised therein; or
- (b) confer any power to adopt; or
- (c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered.

Section 49 is mandatory, and a document which is required to be registered cannot be received in evidence as affecting immovable property. (Mulla, pages 223 to 228)

An unregistered document that comes within Section 17 cannot be used in any legal proceeding to bring out indirectly the effect which it would have if registered.

In the given situation, A buys land for Rs. 2.50 Crore from B in Delhi. A and B executed the sale deed but did not register it from the Sub-Registrar. After entering into the sale deed, it came into

knowledge of A that some dispute was pending in the land. Now, A cannot knock the door of the court as the sale deed is not registered. This is because such a document is dealt with by Section 17 which contemplates mandatory registration. A also cannot give an excuse that he was unaware of the law because ignorance of the law is no excuse.

However, after payment of the duty he may be allowed subject to the compliance of necessary provisions.

Also as provided in Section 49 of the Registration Act, 1908, proviso, an unregistered document affecting immovable property and required by this Act or the Transfer of property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882 or as evidence of any collateral transaction not to be effective by registered instrument. All that the proviso to Section 49 permits is that in a suit for specific performance an unregistered document affecting immovable property may be given in evidence. The purpose is that the document which has not conveyed or passed title may still be used as evidence of the terms.

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

**Question 4**

- (a) Express mention of one thing implies the exclusion of another. Discuss under the interpretation of statutes.

(5 marks)

- (b) When the date was not fixed by the parties for the performance of a specific act, then how the court will compute the limitation period? When does the limitation period start for filing a suit? Decide with the help of the case laws.

(5 marks)

- (c) The appellant entered into an agreement with the respondent for the sale of 40,000 WMT (Wet Metric Tonne) of Iron Ore Pellets. Dispute arose between the parties regarding the price and payment terms and the appellant did not deliver the goods to the respondent. The respondent claimed for damages and the appellant denied any liability. Clause 18 of the agreement between the parties contains an arbitration clause. The respondent invoked the arbitration clause and the appellant did not agree for the appointment of the arbitrator. Hence, the respondent filed a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 before the Madras High Court. The Madras High Court vide impugned order appointed a former judge of the Madras High Court as the sole arbitrator. The appellant preferred the appeal to the Supreme Court. Decide whether the Madras High Court has justified in appointing the arbitrator. Give your reasons.

(5 marks)

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

**Question 4A**

- (i) Jeremy Bentham claimed that nature has placed the man under the command of two sovereigns. He also stated that every law may be considered in eight different respects. Elucidate the statements.

- (ii) In India a statute or law is valid because it derives its legal authority from being duly passed by the Parliament and receiving the assent of the President, the Parliament and the President, derive their authority from a norm i.e., the Constitution. From where does the Constitution derive its validity ? Explain. Which theory of law is based on a pyramidal structure of hierarchy of norms that derive their validity from the basic norm ? Elucidate.
- (iii) "The Law of limitation bars the remedy in a Court of law only when the period of limitation has expired, but it does not extinguish the right." Elucidate the statement. Whether court can *Suo moto* take note of the question of limitation ?

(5 marks each)

**Answer 4 (a)***Expressio Unis Est Exclusio Alterius*

The rule means that express mention of one thing implies the exclusion of another. At the same time, general words in a statute must receive a general construction, unless there is in the statute some ground for limiting and restraining their meaning by reasonable construction; because many things are put into a statute *ex abundantia cautela*, and it is not to be assumed that anything not specifically included is for that reason alone excluded from the protection of the statute. The method of construction according to this maxim must be carefully watched. The failure to make the 'expressio' complete may arise from accident. Similarly, the 'exclusio' is often the result of inadvertence or accident because it never struck the draftsman that the thing supposed to be excluded requires specific mention. The maxim ought not to be applied when its application leads to inconsistency or injustice.

Similarly, it cannot be applied when the language of the Statute is plain with clear meaning. (*Parbhani Transport Co-operative Society Ltd. v. Regional Transport Authority, AIR 1960 SC 801*)

**Answer 4 (b)**

The facts of the given situation are similar to the facts in the case of *Valliammai vs. K.P. Murali and Others* decided by Supreme Court on 11<sup>th</sup> September, 2023.

In this case the Supreme Court has referred to the provisions of Article 54 of Part II of the Schedule to the Limitation Act, 1963 which stipulates the limitation period for filing a suit for specific performance as three years from the date fixed for performance, and in alternative when no date is fixed, three years from the date when the plaintiff has notice that performance has been refused.

In this case, the Supreme Court referred to the case earlier decided in *Pachanan Dhara and Others v. Monmatha Nath Maity (2006) 5 SCC 340*. The Supreme Court in the referred case had held that for determining the applicability of the first or the second part, the court will have to see whether any time was fixed for the performance of the agreement to sell and if so fixed, whether the suit was filed beyond the prescribed period unless a case for the extension of time or performance was pleaded or established. However, when no time is fixed for performance, the court will have to determine the date on which the plaintiff had notice of refusal on the part of the defendant to perform the contract.

In view of the above mentioned case, it can be said that the limitation period starts when the plaintiff has notice that performance has been refused. The court will have to determine the date on which the plaintiff had notice of refusal on the part of the defendant to perform the contract.

**Answer 4(c)**

As per Section 20(1) of the Arbitration and Conciliation Act, 1996 (AC Act) the parties are free to agree on the place of arbitration and sub-section (2) states that if they fail to reach an agreement,

the place of arbitration is determined by the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties. Section 20(3) of AC Act introduces an option by providing that the arbitrator/tribunal may, unless otherwise agreed by the parties, may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

Parties are free to agree on the place of arbitration. Party autonomy has to be construed in the context of parties choosing a court which has jurisdiction out of two or more competent courts having jurisdiction.

The case is similar to the Supreme Court judgement in Brahmani River Pellets Limited (Appellant) vs. Kamachi Industries Limited (Respondent).

In this case, the appellant contested the petition challenging the jurisdiction of the Madras High Court on the ground that the parties have agreed that the Seat of arbitration be Bhubaneswar.

The Hon'ble supreme court observed that Section 2(1) (e) of the Arbitration and Conciliation Act, 1996 (the Act) defines the "Court" with reference to the term "subject-matter of the suit". As per Section 2(1) (e) of the Act, if the "subject-matter of the suit" is situated within the arbitral jurisdiction of two or more courts, the parties can agree to confine the jurisdiction in one of the competent courts. In para (96) of BALCO, the Supreme Court held that the term "subject matter" in Section 2(1) (e) of the Act is to identify the court having supervisory control over the arbitral proceedings. As per Section 20 of the Act, parties are free to agree on the place of arbitration. Party autonomy has to be construed in the context of parties choosing a court that has jurisdiction out of two or more competent courts having jurisdiction. The Supreme Court observed that when the parties agreed to have the "venue" of arbitration at Bhubaneswar, the Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act. The impugned order was liable to be set aside.

Therefore, the Madras High Court was not justified in appointing the arbitrator.

### **Alternate Answer**

According to section 11(6) of Arbitration and Conciliation Act, 1996, where, under an appointment procedure agreed upon by the parties,–

- (a) a party fails to act as required under that procedure; or
- (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
- (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

In view of the above mentioned provision, Madras High Court can appoint Arbitrator if the matter is under its Jurisdiction under section 11 of the Arbitration and Conciliation Act, 1996.

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

#### **Answer 4A(i)**

Jeremy Bentham was of the initial contributors on the function that laws should perform in a

society. He claimed that nature has placed man under the command of two sovereigns- pain and pleasure. 'Pleasure' in Bentham's theory has a somewhat large signification, including altruistic and obligatory conduct, the 'principle of benevolence'; while his idea of 'interest' was anything promoting pleasure. The function of laws should be to bring about the maximum happiness of each individual for the happiness of each will result in the happiness of all. The justification for having laws is that they are an important means of ensuring happiness of the members of community generally. Hence, the sovereign power of making laws should be wielded, not to guarantee the selfish desires of individuals, but consciously to secure the common good.

Bentham said that every law may be considered in eight different respects. These are as under:

1. **Source:** The source of a law is the will of the sovereign, who may conceive laws which he personally issues, or adopt laws previously issued by sovereigns or subordinate authorities, or he may adopt laws to be issued in the future by subordinate authorities. Sovereign according to Bentham is any person or assemblage of person to whose will a whole political community is supposed to be in a disposition to pay obedience, and then in preference to the will of any other person.
2. **Subjects:** These may be persons or things. Each of these may be active or passive subjects, i.e., the agent with which an act commences or terminates.
3. **Objects:** The goals of a given law are its objects.
4. **Extent:** Direct extent means that law covers a portion of land on which acts have their termination; indirect extent refers to the relation of an actor to a thing.
5. **Aspects:** Every law has 'directive' and a 'sanctional' part. The former concerns the aspects of the sovereign will towards an act-situation and the latter concerns the force of a law. The four aspects of the sovereign will are command, prohibition, non-prohibition and non-command and the whole range of laws are covered under it. These four aspects are related to each other by opposition and concomitancy.
6. **Force:** The motivation to obey a law is generated by the force behind the law.
7. **Remedial appendage:** These are a set of subsidiary laws addressed to the judges through which the judges cure the evil (compensation), stop the evil, or prevent future evil.
8. **Expression:** A law, in the ultimate, is an expression of a sovereign's will. The connection with will raises the problem of discovering the will from the expression.

Having listed the eight different respects through which a law can be considered, Bentham went on to analyse the 'completeness' of law in jurisprudential sense. He said that a complete law would have the features of integrality as well as unity. Integrality means that a law should be complete in expression, connection and design. A law is complete in expression when the actual will of the legislation has been completely expressed. A law is complete when various parts of it dealing with various aspects are well co-ordinated. If a law does not cover a specific situation that it might have wanted to cover while being enacted, it is incomplete in design. According to Bentham the unity of a law would depend upon the unity of the species of the act which is the object of the law.

#### **Answer 4A(ii)**

In India a statute or law is valid because it derives its legal authority from being duly passed by the Parliament and receiving the assent of the President, the Parliament, and the President, derive their authority from a norm i.e., the Constitution. As to the question from where the Constitution derives its validity, there is no answer and, therefore, it is the Grundnorm, according to Kelsen's conception of pure theory of law. Grundnorms are generally followed by the Superior Norms. Superior norms are

laws that govern the subordinate laws. They are inferior to Grundnorm but superior to subordinate laws. Whereas Subordinate norms are derived or made to assist the superior norm. These norms derive their justification from superior norms.

Kelsen's pure theory of law is based on a pyramidal structure of hierarchy of norms which derive their validity from the basic norm.

Kelsen described the law as a "normative science" as distinguished from natural sciences which are based on cause and effect, such as the law of gravitation. The laws of natural science are capable of being accurately described, determined, and discovered whereas the science of law is knowledge of what law ought to be. Like Austin, Kelsen also considered sanction as an essential element of law but he preferred to call it 'norm'. According to Kelsen, 'law is a primary norm which stipulates sanction'.

According to Kelsen, 'norm (sanction) rules forbidding or prescribing a certain behaviour'. He saw legal order as the hierarchy of norms having sanctions, and jurisprudence was the study of these norms which comprised legal order. Kelsen distinguished moral norms from legal norms and said that though moral norms are 'ought' prepositions, a violation of it does not have any penal fallout. The 'ought' in the legal norm refers to the sanction to be applied for violation of law.

According to Kelsen, we attach legal-normative meaning to certain actions and not to others depending on whether that event is accorded any legal-normative by any other legal norm. This second norm gains its validity from some other norm that is placed above it. The successive authorizations come to an end at the highest possible norm which was termed by Kelsen as 'Grundnorm'.

Grundnorm or basic norm determines the content and gives validity to other norms derived from it. Under Kelsen's pure theory, the grundnorm does not derive its validity from any other norm and its validity must be presupposed. In his view, the basic norm is the result of social, economic, political and other conditions and it is supposed to be valid by itself.

#### **Answer 4A(iii)**

The law relating to limitation is incorporated in the Limitation Act of 1963 (the Act), which prescribes different periods of limitation for suits, petitions or applications. The Act applies to all civil proceedings and some special criminal proceedings which can be taken in a Court of law unless its application is excluded by any enactment.

The Law of limitation indeed bars the remedy in a Court of law only when the period of limitation has expired, but it does not extinguish the right that it cannot be enforced by judicial process (*Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay, AIR 1958 SC 328*) Thus, if a claim is satisfied outside the Court of law after the expiry of period of limitation, that is not illegal.

Section 3 of the Act provides that any suit, appeal or application if made beyond the prescribed period of limitation, it is the duty of the Court not to proceed with such suits irrespective of the fact whether the plea of limitation has been set up in defense or not. The provisions of Section 3 are mandatory. The Court can *suo motu* take note of the question of limitation. The question whether a suit is barred by limitation should be decided on the facts as they stood on the date of presentation of the plaint. It is a vital section upon which the whole limitation Act depends for its efficacy. The effect of Section 3 is not to deprive the Court of its jurisdiction. Therefore, the decision of a Court allowing a suit which had been instituted after the period prescribed is not vitiated for want of jurisdiction. A decree passed in a time barred suit is not a nullity.

In the case of *Noharlal Verma vs. District Cooperative Central Bank Limited, Jagdalpur, (SC), 2008,*

the Supreme Court observed that, if the statute stipulates a particular period of limitation, no concession or order would make an application barred by time to be within the limitation and the authority had no jurisdiction to consider such application on merits.

### Question 5

(a) Enumerate the distinction between the Cheque and the Bill of Exchange.

(5 marks)

(b) Define digital signature and electronic signature certificate. Elucidate the procedure for obtaining the electronic signature certificate.

(5 marks)

(c) In the case *Reliance Petrochemicals Limited V. Indian Express Newspapers, 1989 AIR 90* the Supreme Court observed that Article 21 includes the right to know. The Supreme Court held that the right to know is a necessary ingredient of participatory democracy. Elucidate the statement and explain the objectives of the Right to Information Act, 2005.

(5 marks)

### Answer 5 (a)

As a general rule, the provisions applicable to bills payable on demand apply to cheques. However, there are few distinctions which are as under:

- (a) A cheque is a bill of exchange and always drawn on a banker, while a bill may be drawn on any one, including banker.
- (b) A cheque can only be drawn payable on demand, a bill may be drawn payable on demand, or on the expiry of a specified period after sight or date.
- (c) A bill payable after sight must be accepted before payment can be demanded, a cheque does not require acceptance and is intended for immediate payment.
- (d) A grace of 3 days is allowed in the case of time bills, while no grace is given in the case of a cheque, for payment.
- (e) The drawer of a bill is discharged, if it is not presented for payment, but the drawer of a cheque is discharged only if he suffers any damage by delay in presentment for payment.
- (f) Notice of the dishonour of a bill is necessary, but not in the case of a cheque.
- (g) The cheque being a revocable mandate, the authority may be revoked by countermanding payment, and is determined by notice of the customer's death or insolvency. This is not so in the case of bill.
- (h) A cheque may be crossed, but not a bill.

### Answer 5 (b)

“Digital signature” means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3 of the Information and Technology Act 2000. [Section 2(1) (p)]

Electronic Signature Certificate” means an Electronic Signature Certificate issued under section 35 and includes Digital Signature Certificate. [Section 2(1) (tb)]

### **Electronic Signature Certificates**

Sections 35-39 of the Information and Technology Act deal with Electronic Signature Certificates. As per section 35 of the Act, certifying authority to issue electronic signature Certificates.

#### **Procedure for obtaining an electronic signature Certificate**

Following is the procedure for obtaining an electronic signature Certificate:

1. Any person may make an application in the prescribed form to the Certifying Authority for the issue of an electronic signature Certificate in such form as may be prescribed by the Central Government.
2. Every such application shall be accompanied by prescribed fees.
3. Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.
4. On receipt of an application, the Certifying Authority may, after consideration of the certification practice statement or the other statement and after making such enquiries as it may deem fit, grant the electronic signature Certificate or for reasons to be recorded in writing, reject the application. It may be noted that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

### **Answer 5(c)**

In the case of *Reliance Petrochemicals Limited v. Indian Express Newspapers*, 1989 AIR 90 the Supreme Court read into Article 21 the right to know. In this case, the Supreme Court held that right to know is a necessary ingredient of participatory democracy. In view of transnational developments when distances are shrinking, international communities are coming together for cooperation in various spheres and they are moving towards a global perspective in various fields including Human Rights, the expression "liberty" must receive an expanded meaning. The expression cannot be limited to the mere absence of bodily restraint. It is wide enough to expand to full range of rights including the right to hold a particular opinion and the right to sustain and nurture that opinion. For sustaining and nurturing that opinion it becomes necessary to receive information. Article 21 of the Constitution of India confers on all persons a right to know which includes a right to receive information.

It may be pointed out that the right to impart and receive information is a species of the right to freedom of speech and expression. Article 19(1)(a) of Constitution of India guarantees to all citizens freedom of speech and expression. At the same time, Article 19(2) permits the State to make any law in so far as such law imposes reasonable restrictions on the exercise of the rights conferred by Article 19(1)(a) of the Constitution in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation and incitement of offence.

Thus, a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1) (a). The State is not only under an obligation to respect the Fundamental Rights of the citizens, but it is equally under an obligation to ensure conditions under which these rights can meaningfully and effectively be enjoyed by one and all.

Right to freedom of speech and expression in Article 19 (1) (a) carries with it the right to propagate and circulate one's views and opinions subject to reasonable restrictions as mentioned above. The

prerequisite for enjoying this right is knowledge and information. Information adds something “new to our awareness and removes vagueness of our ideas”.

The Right to Information Act considered as watershed legislation, is the most significant milestone in the history of the Right to Information movement in India allowing transparency, autonomy, and access to accountability.

### **Objectives of the Right to Information Act, 2005**

The Right to Information Act, 2005 (the Act/RTI Act) confers on all citizens a right to information. The Act provides for setting out the practical regime of right to information for citizens to secure access to information held by public authorities to promote transparency and accountability in the working of every public authority.

In the case of *Anjali Bhardwaj and Others Vs. Union of India and Others in Writ Petition (Civil) No. 436 of 2018* Judgement dated February 15, 2019, the Hon'ble Supreme Court of India in Paragraph 18, 19 and 68 observed that there is a definite link between right to information and good governance. In fact, the RTI Act itself lays emphasis on good governance and recognizes that it is one of the objectives which the said Act seeks to achieve. The RTI Act would reveal that four major elements/objectives required to ensure good governance are:

- i. greater transparency in the functioning of public authorities;
- ii. informed citizenry for promotion of partnership between citizens and the Government in the decision-making process;
- iii. improvement in accountability and performance of the Government; and
- iv. reduction in corruption in the Government departments.

The right to information, therefore, is not only a constitutional right of the citizens but there is now a legislation in the form of RTI Act which provides a legal regime for people to exercise their fundamental right to information and to access information from public authorities. The very preamble of the Act captures the importance of this democratic right which reads as “democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.”

This Act is enacted not only to sub-serve and ensure freedom of speech. On proper implementation, it has the potential to bring about good governance which is an integral part of any vibrant democracy. Attaining good governance is also one of the visions of the Constitution.

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

#### **Question 6**

- (a) A and B are litigating in a Court of law over property X and during the pendency of the suit, A transfers the property X to C. The suit ends in B's favour. Decide whether C can claim property from B. Give reasons for your answer.

(5 marks)

- (b) A bill is endorsed, “Pay A or order”. A endorses it in blank, and it comes into the hands of B, who simply delivers it to C, C forges B's endorsement and transfers it to D. Whether D can claim payment ? Decide while giving reasons for your answer.

(5 marks)

(c) A undertook to sell a plot of land to B but before the plot could be developed, war broke out and the land was temporarily requisitioned by the Government. A offered to return earnest money to B in cancellation of the contract. B did not accept and sued A for specific performance. A pleaded discharge by frustration. Decide and provide for your conclusions.

(5 marks)

(d) A goes to B's shop and purchases silk saree thinking that it is made of Banarsi silk. The shopkeeper knows that A's thinking is wrong. He however does not correct A's impression. Later on, when A discovers that the saree is not made of Banarsi silk he wants to avoid the contract. Would A succeed ? Give reasons.

(5 marks)

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

**Question 6A**

(i) Elaborate the provisions of Section 32 of Arbitration and Conciliation Act, 1996 regarding termination of arbitration proceeding.

(5 marks)

(ii) What is the extent of liability of instruments to stamp duty where several instruments are executed in a single transaction ? Explain.

(5 marks)

(iii) What are various types of mediation and enumerate the distinction between Arbitration and Mediation.

(5 marks)

(iv) What do you understand by admission as per the Indian Evidence Act, 1872 ? Distinguish it from confession.

(5 marks)

**Answer 6(a)**

The case is related to the doctrine of *Lis pendens* [Section 52 of the Transfer of Property Act, 1882(T.P. Act)]. *Lis* means dispute, *Lis pendens* means a pending suit, action, petition, or the like. Section 52 of the T.P. Act incorporates the doctrine of *Lis pendens*. It states that during the pendency of a suit in a Court of Law, property that is subject to litigation cannot be transferred.

**Essential requirements:**

To constitute a *Lis pendens*, the following elements must be present-

1. There must be a suit or proceeding in a court of competent jurisdiction.
2. The suit or proceeding must not be collusive.
3. The litigation must be one in which the right to immovable property is directly and specifically in question.
4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.
5. Such transfer must effect the rights of the other party that may ultimately accrue under the terms of the decree or order.

The rule is based on the doctrine of expediency i.e., the necessity for final adjudication. A plea of *lis pendens* will be allowed to be raised even though the point is not taken in the pleadings or raised as an issue.

When an application to sue in *forma pauperis* is admitted, the suit is pending from the time of presentation of the application to the Court but not if it is rejected.

A suit in foreign Court cannot operate as *lis pendens*. The doctrine of *lis pendens* does not apply to moveables. It is the essence of the rule that a right to immovable property is directly and specifically in question in the suit. The doctrine is not applicable in favour of a third-party.

### **Effect**

If the parties to the litigation, are completely prevented from transferring the property in litigation, it would cause unnecessary delay and hardship, as they would have to wait till the final disposal of the case. So, Section 53 creates a limitation over the transfer by making it subject to the result of the litigation. The effect of this doctrine is not to invalidate or avoid the transfer, or to prevent the vesting of title in the transfer, but to make it subject to the decision of the case, and the rule would operate even if the transferee *pendente lite* had no notice of the pending suit or proceeding at the time of the transfer.

In the given situation, A and B are litigating in a Court of law over property X and during the pendency of the suit A transfers the property X to C. The suit ends in B's favour.

Here C who obtained the property during the time of litigation cannot claim the property. He is bound by the decree of the Court wherein B has been given the property. Section 52 lays down the Indian rule of *Lis pendens* being the legislative expression of the Maxim- "*ut lite pendente nihil innovetur*" 'During litigation nothing new should be introduced'.

### **Answer 6(b)**

#### **Forged Endorsement**

The case of a forged endorsement is worth special notice. If an instrument is endorsed in full, it cannot be negotiated except by an endorsement signed by the person to whom or to whose order the instrument is payable, for the endorsee obtains title only through his endorsement. Thus, if an instrument be negotiated by means of a forged endorsement, the endorsee acquires no title even though he be a purchaser for value and in good faith, for the endorsement is a nullity. Forgery conveys no title. But where the instrument is a bearer instrument or has been endorsed in blank, it can be negotiated by mere delivery, and the holder derives his title independent of the forged endorsement and can claim the amount from any of the parties to the instrument.

#### **Liability of Acceptor of Forged Endorsement (Section 41 of the Negotiable Instrument Act, 1881)**

An acceptor of a bill of exchange already endorsed is not relieved from liability by reason that such endorsement is forged if he knew or had reason to believe the endorsement to be forged when he accepted the bill.

In the present case D, as the holder does not derive his title through the forged endorsement of B, but through the genuine endorsement of A and can claim payment from any of the parties to the instrument in spite of the intervening forged endorsement.

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

#### **Discharge by Impossibility or Frustration (Section 56 of the Indian Contract Act, 1872).**

A contract that is entered into to perform something that is clearly impossible is void. For instance,

A agrees with B to discover treasure by magic. The agreement is void by virtue of Section 56 para 1 which lays down the principle that an agreement to do an act impossible in itself is void.

Sometimes subsequent impossibility (i.e. where the impossibility supervenes after the contract has been made) renders the performance of a contract unlawful and stands discharged; as for example, where a singer contracts to sing and becomes too ill to do so, the contract becomes void. In this connection, para 2 of Section 56 provides that a contract to do an act, which after the contract is made, becomes impossible or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

If the impossibility is not obvious and the promisor alone knows of the impossibility or illegally then existing or the promisor might have known as such after using reasonable diligence, such promisor is bound to compensate the promisee for any loss he may suffer through the non-performance of the promise in spite of the agreement being *void ab-initio* (Section 56, para 3).

### **Cases in which there is no supervening impossibility**

In the following cases contracts are not discharged on the ground of supervening impossibility-

- (a) Difficulty of performance: The mere fact that performance is more difficult or expensive than the parties anticipated does not discharge the duty to perform.
- (b) Commercial impossibilities do not discharge the contract. A contract is not discharged merely because the expectation of higher profits is not realised.
- (c) Strikes, lockouts and civil disturbances like riots do not terminate contracts unless there is a clause in the contract providing for non-performance in such cases. Supervening impossibility or illegality is known as frustration under English Law.

The facts of the given situation are similar to that of case of *Satyabarta Ghose v. Mugnurang A.I.R. 1954 S.C. 44*. In this case, the Supreme Court interpreted the term impossible appearing in second paragraph of Section 56. The Court observed that the word impossible has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain; it can very well be said that the promisor found it impossible to do the act which he promised to do. In this case, A undertook to sell a plot of land to B but before the plot could be developed, war broke out and the land was temporarily requisitioned by the Government. A offered to return earnest money to B in cancellation of the contract. B did not accept and sued A for specific performance. A pleaded discharge by frustration. The Court held that Section 56 is not applicable on the ground that the requisition was of a temporary nature and there was no time limit within which A was obliged to perform the contract. The impossibility was not of such a nature which would strike at the root of the contract.

In view of the above discussion, it can be said that the doctrine of frustration will not be applicable in this case.

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

#### **Doctrine of Caveat Emptor**

“Caveat emptor” is a Latin word that means “let the buyer beware”.

This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose. The doctrine of *caveat emptor* is embodied in Section 16 of the Sale of Goods Act, 1930 which states that “subject to the provisions of this Act and of any other

law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale". In simple words, it is not the seller's duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose.

The principle was applied in the case of *Ward vs. Hobbs, (1878) 4 A.C. 13*, where certain pigs were sold by auction and no warranty was given by seller in respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer's own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer's duty to satisfy himself regarding the health of the pigs. Generally, it is no part of the seller's duty in a contract of sale of goods to give to the buyer an article suitable for a particular purpose, or of a particular quality. Also, the seller is under no obligation to point out the defects in the goods. It is the duty of the buyer to thoroughly examine the goods or to make known to the seller the purpose for which goods are required before he buys. If he makes the wrong choice, he cannot blame the seller.

In the given situation, A himself has made the selection without depending upon the skills and judgment of the seller. Therefore, A cannot avoid the contract.

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

**Answer 6A(i)**

As per Section 32(1) of the Arbitration and Conciliation Act, 1996 (the Act) the arbitral proceeding shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

Under Section 32(2) of the Act, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings where –

- a. The claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in, obtaining a final settlement of the dispute,
- b. The parties agree on the termination of the proceeding, or
- c. The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

Section 32(3) of the Act says that the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings. However, this is subject to the provisions of Section 33 and 34(4) of the Act.

**Answer 6A(ii)**

Section 4 of the Indian Stamp Act, 1899 provides that where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed.

The parties may determine for themselves which of the instrument so employed shall, for the purposes of section 4(1), be deemed to be the principal instrument. Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

However, notwithstanding anything contained in sub-sections (1) and (2), in the case of any issue, sale or transfer of securities, the instrument on which stamp-duty is chargeable under section 9A shall be the principal instrument for the purpose of this section and no stamp-duty shall be charged on any other instruments relating to any such transaction.

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

#### **Types of Mediation**

1. **Court-Referred Mediation** - It applies to cases pending in Court and which the Court would refer for mediation under Section 89 of the Code of Civil Procedure, 1908. The courts have mediation centres where cases are referred, and following a preliminary investigation, the cases are assigned to skilled and qualified mediators from the Mediation Centres' Panel of Mediators.

Court Annexed Mediation - In Court- Annexed Mediation the mediation services are provided by the court as a part and parcel of the same judicial system as against Court-Referred Mediation, wherein the court merely refers the matter to a mediator.

2. **Statutory/Mandatory Mediation** - Some disputes, like those involving labour and family laws, are required by law to go through the mediation procedure. Mandatory mediation simply refers to the act of attempting mediation rather than requiring parties to resolve their problems through mediation.
3. **Private Mediation** - In private mediation, qualified mediators offer their services on a private, fee-for-service basis to the Court, to members of the public, to members of the commercial sector, and also to the governmental sector to resolve disputes through mediation. Private mediation can be used in connection with disputes pending in Court and pre-litigation disputes.
4. **Online Mediation** - Online mediation including pre-litigation mediation may be conducted at any stage of mediation, with the written consent of the parties including by the use of electronic form or computer networks.

#### **Distinction between Arbitration and Mediation**

1. Mediation is when a neutral third party aims to assist the parties in arriving at a mutually agreeable solution whereas arbitration is like litigation which is outside the court and which results in an award like an order.
2. Mediation is more collaborative; arbitration is more adversarial.
3. The process of mediation is more informal than that of arbitration.
4. The outcome in mediation is controlled by the parties whereas in arbitration it is controlled by the arbitrator.
5. In mediation, the dispute may or may not be resolved whereas in arbitration it is always settled in either party's favour.

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

#### **Admissions**

An admission is defined in Section 17 of the Indian Evidence Act, 1872(the Act) as a statement, oral or documentary or contained in electronic form which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances mentioned under Sections 18 to 20 of the Act. Thus, whether a statement amounts to an admission

or not depends upon the question whether it was made by any of the persons and in any of the circumstances described in Sections 18-20 and whether it suggests an inference as to a fact in issue or a relevant fact in the case. Thus, admission may be verbal or contained in documents as maps, bills, receipts, letters, books etc. (However, the word 'statement' has not been defined in the Act. Therefore, the ordinary dictionary meaning is to be followed which is "something that is stated.") An admission may be made by a party, by the agent or predecessor-in-interest of a party, by a person having joint propriety of pecuniary interest in the subject matter (Section 18) or by a "reference" (Section 20).

*Example:* The question is, whether a horse sold by A to B is sound. A says to B-"Go and ask C, C knows all about it." C's statement is an admission. This is an example of reference.

An admission is the best evidence against the party making the same unless it is untrue and made under the circumstances which does not make it binding on him. An admission by the Government is merely relevant and non-conclusive, unless the party to whom they are made has acted upon and thus altered his detriment. An admission must be clear, precise, not vague or ambiguous. In *Basant Singh v. Janky Singh*, (1967) 1 SCR 1, the Supreme Court held:

"(1) Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admission. Under the Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. However, this admission cannot be regarded as conclusive and it is open to the party to show that it is not true.

(2) All the statements made in the plaint are admissible as evidence. The Court is, however, not bound to accept all the statements as correct. The Court may accept some of the statements and reject the rest." Admission means conceding something against the person making the admission. That is why it is stated as a general rule (the exceptions are in Section 21), that admissions must be self-harming; and because a person is unlikely to make a statement which is self-harming unless it is true evidence of such admissions as received in Court. These Sections deal only with admissions oral and written. Admissions by conduct are not covered by these sections. The relevancy of such admissions by conduct depends upon Section 8 and its explanations. Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the record produced is in question.

### **Distinction between Confessions and Admissions**

A confession, however, is received in evidence for the same reason as an admission, and like an admission it must be considered as a whole. Further, there can be an admission either in a civil or a criminal proceeding, whereas there can be a confession only in criminal proceedings. An admission need not be voluntary to be relevant, though it may affect its weight; but a confession to be relevant, must be voluntary. There can be relevant admission made by an agent or even a stranger, but, a confession to be relevant must be made by the accused himself. A confession of a co-accused is not strictly relevant, though it may be taken into consideration, under Section 30 in special circumstances.

Confessions are classified as: (a) judicial, and (b) extra-judicial. Judicial confessions are those made before a Court or recorded by a Magistrate under Section 164 of the Criminal Procedure Code, 1973 after following the prescribed procedure such as warning the accused that he need not to make the confession and that if he made it, it would be used against him. Extra-judicial confessions are those which are made either to the police or to any person other than Judges and Magistrates as such. An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence. It will have to be proved just like any other fact. The value of the evidence depends upon the truthfulness of the witness to whom it is made.

# COMPANY LAW & PRACTICE

## GROUP 1 PAPER 2

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-I

#### Case Study

Manoranjan, a young Journalist and MBA with flair for writing started a small net-based business of content writing in the year 2011 by the name–Nirbheek Contents. Initially, his business focused on website copywriting and business blog writing. Riding the wave of sourcing work from India by western countries, his business grew quite rapidly.

Having taken the business to the highest level his focus shifted from writing contents himself to have a team to write content. He personally monitored them to ensure quality. In the year 2016, he formed a media company namely (MTR) Ltd. in Delhi and had a team of fifty persons who were working with him on regular basis.

With the initiative of Manoranjan being very ambitious and positive about his business MTR Ltd. expanded the business by entering into the business of printing books, journals, exporting printed material to the foreign clients etc. After few years the Board decided for demerging its both business where MTR Limited (MTR or ‘‘Demerged Company’’) shall remain engaged in media business and a new company i.e., ATR Limited (ATR or ‘‘Resulting Company’’) which was formed will engage in the printing business.

The Board of Directors of MTR & ATR approved the scheme of arrangement in their respective meetings. Accordingly, the complete printing business, as a going concern of the demerged entity, was required to be transferred including its assets and liabilities which belong to the printing business of the demerged company to the resulting company. However, the immovable properties were excluded from the deal.

A meeting of members of MTR Limited was convened under the order of the Hon'ble NCLT to consider a scheme of compromise and arrangement. Notice of the meeting was sent in the prescribed manner to all the 1200 members holding in the aggregate 1,00,00,000 shares. The meeting was attended by 900 members holding 60,00,000 shares. 420 members holding 44,00,000 shares voted in favor of the scheme. 360 members holding 12,00,000 shares voted against the scheme. The remaining members abstained from voting.

A group of creditors of MTR Limited was against the ongoing scheme of arrangement and they made a complaint to the concerned Registrar of Companies (the Registrar) alleging that the management of the company has indulged in destruction and falsification of the accounting records of the company and proposed scheme is not in the interest of the unsecured creditors.

The registered office of ATR Ltd. is presently situated in the premises of MTR Ltd. However, in order to have a separate registered office for corporate business ATR Ltd. hired the premises in the same city where its registered office will be shifted after complying with the legal formalities.

XYZ Limited, an associate company of MTR Limited, has a paid-up capital of ₹ 460 lakhs and accumulated free reserves of ₹ 740 lakhs. Loss for the year ending 31st march, 2023 is ₹ 74 lakhs.

Dividend was declared at the following rates during the three years immediately preceding to the year 2022-23 :

Year 1	10%
Year 2	12%
Year 3	14%

Based on the above information and referring to the provisions of the Companies Act, 2013 answer the following :

### Question 1

- (a) Examine, whether the scheme of compromise and arrangement is approved by the requisite majority of members.  
(3 marks)
- (b) A group of creditors of MTR Limited, not satisfied with the scheme being approved in a fraudulent manner, made a complaint to the Registrar of Companies (the Registrar) and the Registrar, immediately on receiving the complaint, attempted during the business hours at 11 a.m. on 25th September, 2023 to enter the premises of the company for seizure of the record but the company opposed to it on the contention that the Registrar has no power to enter the premises and seize the record without the order of the special court. Decide, whether the contention of the company is valid.  
(3 marks)
- (c) What is the maximum rate at which the dividend can be declared by XYZ Limited ?  
(3 marks)
- (d) What is the amount available for declaration of the dividend subject to fulfillment of other conditions in case XYZ Limited declares the dividend ?  
(3 marks)
- (e) Referring to the provisions of the Companies Act, 2013 explain the managing director of ATR Ltd. the formalities to be completed before and after shifting of the registered office clarifying whether the approval of members of the company through a special resolution is required for it.  
(3 marks)

### Answer 1(a)

Section 230(6) of the Companies Act, 2013 states that the scheme shall be approved when at a meeting held in pursuance of section 230(1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement scheme.

In this case out of 1200 members, 900 members attended the meeting, but only 780 members voted at the meeting. As 420 members voted in favor of the scheme, the requirement relating to majority in number (i.e. 390) is satisfied. 780 members who participated in the meeting held 56,00,000 shares, three-fourth of which works out to 42,00,000 shares while 420 members (more than 390 i.e. 50% of 780) who voted for the scheme held 44,00,000 shares (more than 42,00,000 shares).

As both the requirements are fulfilled, the scheme is approved by the requisite majority.

### Answer 1(b)

Section 209 (1) of the Companies Act, 2013 states that, if the Registrar has reasonable ground to believe that the books and papers of

- a company or
- relating to the key managerial personnel or
- any director or
- auditor or
- company secretary in practice if the company has not appointed a company secretary

are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court for the seizure of such books and papers,

- a) enter with such assistance as may be required and search the place or places where such books or papers are kept; and
- b) seize such books and papers as he considers necessary after allowing the company to take copies of or extracts there from, such books or papers at its cost.

According to the above provisions, the Registrar has failed to obtain permission from the special court; So, he is not authorized to enter the premises of the company and seize the books of account of MTR Limited. Hence, the contention of the MTR Limited is valid in law.

### Answer 1(c)

In the case of XYZ Limited there is inadequacy or absence of profits during the current year ending on 31st March, 2023. Hence, as per rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, the rate of dividend declared shall not exceed the average of the rate at which dividend was declared by it in the immediately preceding 3 financial years. The average rate of dividend is 12% (10%+12%+14% divided by 3) and the maximum amount of dividend can be Rs. 55.2 lakh (12% of Paid-up Capital i.e. Rs. 460 lakhs)

### Answer 1(d)

Total amount to be drawn from such accumulated profits shall not exceed 1/10<sup>th</sup> of the sum of its paid-up share capital and free reserves as per the last audited financial statements.

The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

Paid-up capital + Free reserves = Rs. (460+740) Lakhs

(Total paid up capital & free reserves) = Rs. 1200 Lakhs

10% thereof – Rs. 120 Lakhs

Less: loss for the year – Rs. 74 Lakhs

Amount available = Rs. 46 Lakhs

Hence, the quantum of dividend is further restricted to Rs. 46 lakhs.

### Answer 1(e)

ATR Ltd. is shifting its registered office within the local limits of same town/city. Hence, the following procedure / formalities to be completed:

**Before shifting:**

Before shifting of the registered office, the Board resolution in the meeting of Board of directors will have to be passed authorizing the director to shift the registered office to the new place.

**After shifting:**

An intimation of the change of registered office and verification of registered address shall be given to the Registrar.

- E-Form INC-22 is required to be filed within 30 days of such change.

It is further be clarified that this change does not involve alteration of memorandum and the change is within the local limits of the same city. Hence, the Board is the competent authority to change the situation of the registered office of the company and approval of the members of the company is not required.

**Question 2**

- (a) P Limited (the company) is a wholly owned subsidiary of Q Limited. The company P Limited wants to make an application for the merger Holding and Subsidiary companies under Section 232 read with Section 230 of the Companies Act, 2013. The Company Secretary of Q Limited is of the opinion that the company cannot apply for merger as per Section 232 of the Act and it shall be mandatory for the company to apply for merger as per Section 233 of the Act i.e., Fast Track Merger. Is the contention of the Company Secretary tenable as per the Act ?

(3 marks)

- (b) XYZ Limited, a listed company was incorporated on 1st August, 2020 with the objective of dairy business. Demand for dairy products was high in the area due to that the sales are remarkable, and business was outstanding. Hence, the Board of Directors in its meeting approved the proposal to set up a new unit in West Bengal and also resolved to raise the funds by issuing shares of the company to the public. The company intends to raise share capital by issuing equity shares in different stages over a certain period of time according to the construction works of the new unit. However, the company does not wish to issue prospectus each and every time of issue of shares. What can be the way out for the company to follow to avoid repeated issuance of prospectus ? Advise, in light of the provisions of the Companies Act, 2013.

(3 marks)

- (c) Sunrise Online Coaching Limited (the company) is registered in Singapore. It has no place of business established in India, however, it is conducting online educational courses and providing online tutorials and coaching for various courses by charging fee for Indian students who have joined the courses online from India. The registered office is situated at Singapore and having its main server for online coaching outside India. State the status of the company under the provisions of the Companies Act, 2013.

(3 marks)

- (d) M/s. NRS Biochemicals Limited is planning to buy-back of its shares during the financial year 2023-24 but the company has defaulted in the payment of term loan and interest thereon to its bankers and not filed the annual return for the financial year 2022-23. The company seeks your advice as to how and when the company can buy- back its shares under these circumstances as per the provisions of the Companies Act, 2013.

(3 marks)

(e) Global Services Limited is planning to issue its equity shares through private placement to some of the persons residing outside India. There is a provision in the Articles of Association of the company for issuing equity shares to the foreigners through private placement. Board in its meeting approved the resolution allotting 10,000 shares to A and B who reside outside India. You are requested to elucidate the compliance requirement of the following referring to the provisions of the Companies Act, 2013 :

- (i) Maintenance of foreign register of members ?
- (ii) Option available, if any, to discontinue the maintenance of foreign register of members.

(3 marks)

### **Answer 2(a)**

As per section 233(1) of the Companies Act 2013, notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered between:

- 2 or more small companies or
- a holding company and its wholly owned subsidiary company or
- Such other class or classes of companies as prescribed.
  - (i) two or more start-up companies; or
  - (ii) one or more start-up company with one or more small company.

The provisions given for fast track merger in section 233 of the Act are optional in nature and not a compulsion on the company. Section 233(14) states that a company covered under Section 233 may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.

Therefore, with respect to schemes of arrangement or compromise falling within the purview of section 233 of the Companies Act, 2013, the concerned companies may, at their discretion, opt to undertake such schemes under sections 230 to 232 of the Act.

Hence, here the opinion of Company Secretary of Q Limited can be said to be not correct and his contention is not valid as per the law. The company shall have an option to choose between normal process of merger under Section 232 read with Section 230 and fast track merger under Section 233.

### **Answer 2(b)**

Company can issue shelf prospectus under Section 31 of the Companies Act, 2013, read with Rule 10 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 to avoid repeated issuance of prospectus.

*Definition:* Shelf Prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. In simple terms Shelf Prospectus is a single prospectus for multiple public issue. Issuer is permitted to offer and sell securities to the public without a separate prospectus for each act of offering for a certain period.

*Validity Period:* Under section 31 of the Act, any class or classes of Companies, as the Securities and Exchange Board (SEBI) may provide by regulations in this behalf, may file a shelf prospectus with the Registrar. Such prospectus is to be submitted at the stage of the first offer of securities which shall indicate a period not exceeding one year as the period of validity of such prospectus. The validity period shall commence from the date of opening of the first offer of securities under that

prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

*Filing of Information Memorandum (FORM PAS-2) with ROC:* An information memorandum is required to be filed by a company filing a shell prospectus which shall contain all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of Securities or the previous offer of securities and the succeeding offer of securities; and such other changes as may be prescribed.

The Information Memorandum shall be prepared in Form PAS-2 and filed with the Registrar within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Where an information memorandum is filed, every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

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

Under section 2 (42) of the Act, "Foreign Company" means any company or body corporate incorporated outside India.

which, –

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

According to Rule 2(l)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014. "Electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to online services such as telemarketing, telecommuting, telemedicine, education, and information research.

In the above case, Sunrise Online Coaching Limited is a company registered in Singapore. It has no place of business established in India but is doing online business through electronic mode in India having its main server for online business outside India.

As per the definition of "Electronic Mode", the Company incorporated outside India, conducting business in India through electronic mode whether main server is installed in India or not, the company will be treated as a foreign company.

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

Circumstances prohibiting buy-back [Section 70(1) of the Companies Act, 2013]

No company shall directly or indirectly purchase its own shares or other specified securities

- a. through any subsidiary company including its own subsidiary companies;
- b. through any investment company of group of investment companies; or
- c. if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company: However, the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

According to section 70(2) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections

92 (Annual Return), section 123 (Declaration of Dividend), section 127 (punishment for failure to distribute dividend) and section 129 (Financial Statement).

Therefore, NRS Bio Chemicals Limited cannot buy back its share until the expiry of cooling period (3 years) after the default is remedied since it has defaulted in repayment of loan and not filed the annual return for the financial year 2022-23.

### Answer 2(e)

- (i) Section 88(4) of the Companies Act, 2013 empowers companies to keep foreign registers of members or debenture- holders, other security holders or beneficial owners residing outside India. It states:

“A company may, if so, authorized by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register referred to in section 88(1), called “foreign register” containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.”

A foreign register is deemed to be a part of the company’s principal register and it should be kept in the same manner as the principal register and be likewise open to inspection.

A duplicate of such register should be maintained at the registered office in India and all entries made in the foreign register should be made in the duplicate register at the registered office as soon as possible.

- (ii) According to Rule 7(11) of the Companies (Management and Administration) Rules, 2014, the company may discontinue the keeping of any foreign register; and thereupon all entries in that register shall be transferred to some other foreign register kept by the company outside India or to the principal register.

Thus, in the given case the Company has the option to discontinue maintenance of foreign register of members.

### Question 3

- (a) Referring to the provisions of the Companies Act read with the relevant Rules examine, whether the following amounts received by a company will be considered as deposits or not :

- (i) Tiwari Exports Limited has raised ₹ 12,00,000 through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognized stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.
- (ii) National Refrigeration Ltd., a leading fridge manufacturer in North India, received ₹ 2 crore from Mr. Ankit for supply of 2000 fridge and made appropriation of such advance after expiry of 390 days from the date of acceptance of such advance.
- (iii) Lalit ceased to be a director of ABC Pvt. Limited (the company) by resignation w.e.f. June 15, 2023 and the company received Rs. 50,00,000/- (Rupees Fifty lakh) from Priya (spouse of Lalit) on June, 10, 2023 and the amount was self-earned savings of Mr. Priya as per her declaration.

(2+2+1=5 marks)

- (b) ABC Ltd. is engaged in the manufacture of ayurvedic medicines, sales are good.

Over the years, it has built a good reputation in the market made the huge profits and its Balance Sheet as at 31st March, 2023 shows the following position :

Authorized Share Capital	(50,00,000 equity shares of face value or Rs. 10/- each) Rs. 500,00,000/-)
Issued, subscribed and paid-up share capital	(10,00,000 equity shares of face value or Rs. 10/- each, fully paid-up) Rs. 100,00,000/-)
Free Reserves	Rs. 30,00,000
Securities Premium	Rs. 10,00,000
Debentures Redemption Reserve	Rs.10.00.000

The Board of Directors proposes to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the sources, conditions of bonus issue and the maximum number of bonus shares that can be issued under the provisions of the Companies Act, 2013.

(5 marks)

- (c) The Board of Directors of Green Stone Limited (the company) consists of total 8 executive directors and 2 non-executive directors. 4 executive directors in collusion with the auditor of the company manipulated the accounts of the company in their own interest. By knowing the conspiracy, the other directors decided to file an application before the Nation Company Law Tribunal (the Tribunal) to pass the order for the removal of the auditor. In view of the given facts and referring to the provisions of the Companies Act, 2013 advise the applicant directors :
- Whether the Tribunal is a competent authority to entertain the application of few directors for removal of auditor of the company ?
  - Will the auditor of Green Stone Limited be eligible to be appointed as an auditor of other company, if he is removed by the order of the Tribunal ?

(3+2=5 marks)

### Answer 3(a)

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 provides the provisions relating to various amounts received by a company which will not be considered as deposits. In terms of this Rule, the answers to the given situations shall be as under:

- Rs. 12,00,000 raised by Tiwari Exports Limited through issue of non- convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub- clause (ixa) of Rule 2 (1) (c).
- Rs. 2,00,00,000 (Rupees Two crore) received by National Refrigeration Limited from Mr. Ankit, as an advance for the supply of goods, but appropriated the said advance after the expiry of 390 days (i.e., more than 365 days). Hence, this amount will be considered as deposit in terms of Rule 2 (1) (c)(xii)(a).
- Rs. 50,00,000 by ABC Pvt Limited from Ms. Priya (i.e. relative of Director), will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c), because she has given a declaration that the amount is given out of her self-acquired funds and not from borrowing etc.

**Answer 3(b):**

According to section 63(1) of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members. in any manner whatsoever, out of- (Sources)

- Its free reserves
- Securities premium account
- The capital redemption reserve account

No issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets

**Conditions for issue of Bonus Shares**

In terms of section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless-

- (a) Authorisation in AOA: It is authorised by its articles.
- (b) Passing of Ordinary Resolution: It has, on the recommendation of the Board, been authorised in the general meeting of the company.
- (c) No defaults: It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it; it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.
- (d) Fully paid-up shares: The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.
- (e) The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.
- (f) No issue in lieu of dividend: The bonus shares shall not be issued in lieu of dividend.

*Maximum number of shares to be issued:*

The company proposes to issue 1 bonus share for every 2 equity shares. The issued and fully paid-up shares are 10,00, 000. Hence, the company wants to issue 5,00,000 shares, the face value of which will be Rs. 50,00,000 and reserve of equal amount is required.

As per Section 71 of the Companies Act, 2013, where the company has created a debenture redemption reserve account, the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

The aggregate of eligible reserves come to Rs. 40,00,000 (Rs. 30,00,000+10,00,000).

Hence, sufficient reserves are not available and the company cannot implement its proposal to issue 1 bonus share for every 2 shares.

**Answer 3(c):**

Given problem is based on removal of auditor by Tribunal in event of fraud u/s 140(5) of the Companies Act 2013.

As per the provisions of Section 140(5) of the Companies Act, 2013, the Tribunal may either

- Suo motu or
- on an application made to it by the Central Government or
- by any person concerned,

if it is satisfied that the auditor of a company has whether directly or indirectly acted in a fraudulent

manner, or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

Section further states that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within 15 days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

An auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

Based upon the above provision, we may conclude as follow: -

- (i) This Section authorizes the Tribunal to pass order for directing the company to change the auditor. However, the Tribunal shall not directly remove the auditor. The application is tenable as it is made by the persons concerned.
- (ii) Auditor of Green Stone Limited so removed shall not be eligible for appointment as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

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

**Question 4**

- (a) Investigation proceeding under the provisions of the Companies Act, 2013 is being carried out against XYZ Limited (the company). During the investigation, the Tribunal has a reasonable ground to believe that a removal, transfer or disposal of funds, assets or properties of the company is likely to take place in a manner that would be prejudicial to the interest of the company. In this connection, the Tribunal requested the company's legal advisers and the bankers respectively to disclose and furnish a copy of the relevant communication made by them to the company. But they refused to share any document or disclose any information relating to their clients under investigation. Under the circumstances, the Tribunal wishes to pass an order to :

- (i) Freeze the assets of the company.
- (ii) Punish the company for the contravention, if any, of the order of the Tribunal.
- (iii) Compel the legal advisers and the bankers to provide the required information.

In the light of the provisions of the Companies Act, 2013 analyses, whether the Tribunal has the power to do so in respect of the above situations.

(2+1+2=5 marks)

- (b) State, whether the following persons are eligible to be appointed as auditor of a company under the provisions of the Companies Act, 2013 :
- (i) Directors of MNO Ltd. (the company) want to appoint Keshav, a fellow member of ICAI and practicing Chartered Accountant as an auditor of the company. Naveen, one of the partners of Keshav's CA firm, has given guarantee for ₹ 1.10 lakhs only in connection with indebtedness of any third person to a subsidiary of the company.
  - (ii) Directors of DEF Ltd. want to appoint Aryaman, a practicing Chartered Accountant as an auditor of the company. Aryaman is indebted to the company for ₹ 4,95,000.

- (iii) Manju is working as purchase manager in RST Ltd. directors RST Ltd. want to appoint Vaibhav, husband of Manju as an auditor of the company.

(2+2+1=5 marks)

- (c) Rockstar Limited (the company) is having its registered office at Hyderabad and also set-up an establishment in the Germany. It obtained a loan from the German bank creating a charge on the assets of the foreign establishment. The company received a notice from the Registrar of Companies (the Registrar) for not filing the particulars of charge created by the company on the property or assets situated outside India. The company wants to defend the notice on the ground that the company is not required to register the particulars of the charge created on the assets not located in India. Referring to the provisions of Companies Act, 2013 advise the company, whether the stand taken by the company is correct. Also, apprise the company of the provision regarding the timeline without extension, for registering the particulars of the charge and the effect of its non-registration.

(5 marks)

**Or (Alternate Question to Q. No. 4)**

**Question 4A**

- (i) Suresh has done his MBA from a reputed Institution of Management and wants to incorporate a private or public company to start e-commerce business in various daily need products. Explain him the distinctions between these two types of companies referring to the provisions of the Companies Act, 2013.

(5 marks)

- (ii) The issued and paid-up share capital of DEF Limited (the company) is ₹ 20 crores consisting of 20,00,000 equity shares of ₹ 100 each. 'The said company has 2000 members. A petition was submitted before the Tribunal signed by 320 members holding 40,000 equity shares of the company for the purpose of relief against oppression and mismanagement by majority shareholders. Examining the provisions of the Company Act, 2013, decide, whether the said petition is maintainable or not. Also, explain the impact on the maintainability of the above petition, if subsequently 160 members, who had signed the petition, withdrew their consent.

(5 marks)

- (iii) Explain the concept of 'Indoor Management' with exception of forgery and negligence as per the provisions of the Companies Act, 2013.

(5 marks)

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

**Answer 4(a):**

*Powers of tribunal as to freezing of assets of Company and imposing*

- (i) As per Section 221 of the Companies Act, 2013, where it appears to tribunal (NCLT) on reasonable ground to believe that removal or transfer or disposal of funds, assets or properties of company is likely to take place in manner prejudicial to interests of company or its shareholders or creditors or in public interest, tribunal may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding 3 years as may be specified in the order or may take place subject to such conditions and restrictions as the tribunal may deem fit.

Hence, the tribunal may pass an order to freeze the assets of the company.

- (ii) In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal as specified above, the company shall be punishable with fine which shall not be less than Rs.1 lakh but which may extend to Rs. 25 lakhs.

Hence, the tribunal may punish the company for the contravention of the order of the tribunal.

- (iii) In term of Section 227 of the Companies Act, 2013 even during an investigation, the legal adviser cannot be compelled to provide the information of any privileged communication made to him in that capacity, except as respects the name and address of his client, or by the bankers of any company, body corporate, or other person of any information as to the affairs of any of their customers, other than such company, body corporate, or person, to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government.

Hence, the legal advisers and bankers of XYZ limited cannot be compelled to provide privileged communication.

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

- (i) As per section 141(3)(d)(iii) of the Companies Act, 2013 read with rule 10 of the Companies (Audit and Auditors) Rules, 2014, an auditor is disqualified to be appointed as an auditor if he or his relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of one lakh rupees.

In the given situation, Keshav will be disqualified to be appointed as an auditor of MNO Ltd as his partner (i.e. Naveen) had given a guarantee for Rs. 1.10 lakhs (i.e. more than the limit of Rs. 1 lakh), in connection with the indebtedness of any third person to the subsidiary of the company.

- (ii) As per section 141(3)(d)(ii) of the Companies Act, 2013 read with rule 10 of The Companies (Audit and Auditors) Rules, 2014, an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs.

In this case, Aryaman will not be disqualified to be appointed as an auditor of DEF Ltd. As he is indebted to DEF Ltd. for Rs. 4,95,000 which is within the limit (i.e. less than Rs. 5 lacs)

- (iii) In this case, since Manju, wife of Vaibhav, (Chartered Accountant) is the Purchase Manager (not a director or KMP) of RST Ltd.

Hence, Vaibhav will not be disqualified to be appointed as an auditor in the said Company.

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

*Registration of the particulars of the charge created:*

According to section 77 of the Companies Act, 2013, it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge. Thus, charge may be created within India or outside India. Also, the subject-matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India.

In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment. As per the above provisions, it is the duty of the company creating a charge

within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge. Hence, the stand taken by Rockstar Limited not to register the particulars of charge created on the assets located outside India is not correct.

*Timeline:* The particulars of the charge together with a copy of the instrument, if any, creating or modifying the charge shall be filed with the Registrar within a period of 30 days of the date of creation or modification of charge.

*Effect of non-registration of Charges:*

According to Section 77 (3) of the Companies Act, 2013, where the particulars of the charge created are not filed with the Registrar of Companies, such charge created by a company shall not be taken into account by the liquidator appointed under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016, as the case may be, or any other creditor of the company.

**Or (Alternate Question to Q. No. 4A)**

**Answer 4A(i)**

Following are the main points of distinction between a private company and a public company with specific reference to the Companies Act, 2013

**1. Minimum Number of Members:**

In case of a private company, the minimum number of persons to form a company are two, while it is seven in the case of public company. (Section 3)

**2. Maximum number of Members:**

In case of private company, the maximum number of members shall not exceed two hundred, whereas there is no such restriction on the maximum number of members in the case of a public company.

**3. Transferability of Shares:**

As per section 44 of the Companies, Act, 2013, the shares of any member in a company shall be movable property and transferrable in the manner provided by the Articles of Association of the company. In a private company, by its very definition, Article of Association of a private company must contain restrictions on transferability of shares.

**4. Prospectus:**

A private company cannot issue a prospectus, the Act prohibits any invitation to the public to subscribe for any securities of the company, while a public company may, through prospectus, invite the public to subscribe for its securities. {Section 2(68)}

**5. Minimum numbers of Directors:**

A private company must have at least two directors on Board, whereas a public company must have at least three directors on Board. (Section 149)

**6. Retirement of Directors:**

Directors of a private company are not required to retire by rotation, but in case of a public company at least 2/3<sup>rd</sup> of the directors must be such whose period of office is subject to retirement by rotation. (Section 152)

**7. Quorum for General Meetings:**

Unless the Articles of Association of the company provide for a larger number, in case of

public company the quorum for general meetings shall be:

- i. five members personally present if the number of members as on the date of meeting is not more than one thousand.
- ii. fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand.
- iii. thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.

In case of a private company, unless Articles of Association provide for a higher number, two members personally present, shall be quorum for a meeting of the company.

#### **Answer 4A(ii)**

As per provisions of Section 244 of the Companies Act, 2013, in the case a company having share capital, following members are eligible to apply for relief against oppression and mismanagement under Section 241 namely:

- (a) not less than 100 members of the Company or not less than 1/10<sup>th</sup> of the total number of its members whichever is less; or
- (b) any member or Members holding not less than 1/10<sup>th</sup> of the issued share capital of the company,

subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.

The share holding pattern of DEF Limited is given as follows:

The issued and paid-up share capital of DEF Limited is Rs. 20,00,00,000 (Rupees Twenty Crore) consisting of 20,00,000 equity shares of Rs.100 each.

The petition alleging oppression and mismanagement has been made by some members as follows:

- (i) No. of members making the petition - 320
- (ii) Amount of share capital held by members making the petition - Rs. 40,00,000 (40,000 shares \* Rs. 100)

The petition shall be valid if it has been made by the lowest of the following;

100 members; or

200 members (being 1/10<sup>th</sup> of 2000); or

Members holding Rs. 2,00,00,000 share capital (being 1/10<sup>th</sup> of Rs. 20,00,00,000)

As it is evident, the petition made by 320 members (being more than 100 members) meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 100 members in this case. Therefore, the petition is maintainable.

The consent to be given by the shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect maintainability of the petition. (*Rajamundry Electric Corporation Vs. V. Nageswar Rao A.I.R.*)

#### **Answer 4A(iii):**

While the doctrine of, "constructive notice" seeks to protect the company against the outsiders, the principal of "indoor management" operates to protect the outsiders against the company.

This doctrine emphasizes on the concept that an outsider whose actions are in good faith and has entered into a transaction with a company can have a presumption that there are no irregularities internally and all the procedural requirements have been complied with by the company. The doctrine of indoor management, also known as the Turquand rule is about one fifty years old, which protects outsiders against the actions done by the company.

Section 176 of the Companies Act, 2013 provides for the validity of acts of Directors - No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the Articles of the company; Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or have been terminated.

The object of the section is to protect persons dealing with the company - outsiders as well as members by providing that the acts of a person acting as director will be treated as valid although it may afterwards be discovered that his appointment was invalid or that it had terminated under any provision of this Act or the Articles of the company [*Ram Raghbir Lal v. United Refineries (Burma) Ltd., (1932) 2 Com Cases 359; AIR 1931 Rang 139.*]

*Exceptions:*

*Forgery* – The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal ab initio.

*Negligence* – The 'doctrine of indoor management', in no way, rewards those who behave negligently. Thus, where an officer of a company does something which shall not ordinarily be within his powers, the person dealing with him must make proper enquiries and satisfy himself as to the officer's authority. If he fails to make an enquiry, he is estopped from relying on the Rule.

(5 marks)

## PART-II

### Case Study :

#### Question 5

You are a company secretary of Bunny Ltd. a listed company and Bunny Ltd. has proposed in November, 2023 to make an investment of Rs. 80 lakhs in the equity shares of Hunny Investment (Pvt.) Ltd. the face value of which is Rs. 40 lakh. The financial data related to Bunny Ltd. and Hunny Investment (Pvt.) Ltd. as on 31st March, 2023 is furnished below :

	Particulars	Bunny Ltd. (Rs. in Lakh)	Hunny Investment Pvt. Ltd. (Rs. in Lakh)
I.	Authorized Capital	800	400
II.	Subscribed and paid-up capital		
	(a) Equity shares	240	300
	(b) Preference shares	20	—
III.	Capital Reserves	20	30

IV.	Free Reserves	20	—
V.	Borrowings from Public Financial Institution	40	—

(A) Bunny Ltd. (the company) furnished the following information related to it as on the date of proposed acquisition :

- (1) No other body corporate has invested any money in its share capital.
- (2) The company has granted guarantee to the tune of ₹ 100 lakh to a nationalized bank in connection with the loan granted to Richa Ltd.
- (3) It has granted housing loan of ₹ 20 lakh to its employees, other than its managing director or whole-time director.

(B) Hunny Investment (Pvt.) Ltd. furnished the following other information related to it :

- (1) The total assets as on 31st March, 2023 were ₹ 330 lakh including investment in shares & debentures of body corporate ₹ 200 lakh.
- (2) The income derived from investment in shares and debentures was ₹ 30 Lakh out of the gross income of ₹ 100 Lakh.

Of the total shareholders of the company there are 20,000 shareholders who are holding shares of nominal value of not more than ₹ 20,000 each. A total number of 1500 such small shareholders have proposed Mr. X as their candidate to be the small shareholders' director.

Based on the above information and referring to the provisions of the Companies Act, 2013 and relevant notifications/circulars issued by the Ministry of Corporate Affairs (MCA) answer the following :

- (a) Identify the authority and the mode of approval for the investment proposal of ₹ 80 lakh in the equity shares in the above scenario.

(5 marks)

- (b) (i) Whether approval of the Public Financial Institution would be required for the investment proposal ?

- (ii) Is there any exemption available to Bunny Ltd. in case Bunny Ltd. is a private company ?

(3+2=5 marks)

- (c) Whether Hunny Investment Pvt. Ltd. is an investment company based on the data given above ?

(5 marks)

- (d) Whether the group of 1500 small shareholders are entitled to propose the appointment of small shareholders' director ? Is it mandatory for the company to appoint such director, if a valid notice is received from the small shareholders ? Decide, the tenure of the small shareholders' director.

(5 marks)

### Answer 5(a)

Section 186 of the Companies Act, 2013(the Act) deals with the provisions relating to Loan and

Investment by a Company. According to Section 186(2) of the Act, no Company shall directly or indirectly -

- (a) give any loan to any person or other body corporate;
- (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- (c) acquire, by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding 60% of its paid-up share capital (equity and preference), free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.

As per Section 186 (3) of the Act, where the aggregate of the loan and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan guarantee or security proposed to be made or given by the Board, exceed the limits specified under Section 186(2) of the Act, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorized by a special resolution passed in a general meeting.

As per Section 186 (5) of the Act, any investment shall be made or loan or guarantee or security given by the Company only after the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the Public financial Institution concerned where any term loan is subsisting shall also be obtained.

#### *Calculation*

According to the information given in the problem:

60% of paid-up share capital (equity and preference), Free reserves and securities premium account is Rs. 168 Lakh

(i.e. 60% of [Rs. 240 + 20+20] = Rs.168 Lakh) or

100% percent of its free reserves and securities premium account is Rs. 20 lakh;

Hence, investment up-to Rs. 168 lakh is allowed without seeking prior authority by special resolution passed in a general meeting.

Bunny Ltd has already given guarantee to the tune of Rs. 100 Lakh to a Nationalized Bank in connection with the loan granted to Richa Ltd.

The aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made is Rs. 180 Lakh (i.e. Rs. 100 Lakh existing guarantee + proposed investment of Rs. 80 Lakh) which is exceeding the limit of Rs. 168 Lakh.

Therefore, the proposed investment shall be first approved by the Board with the consent of all the directors present at the meeting (i.e. unanimously) and then approved by the members by passing a Special resolution.

#### *Note:*

The MCA has clarified that loans and/or advances made by the companies to their employees, other than the Managing or Whole Time Director are not governed by Section 186 of the Act. Hence, it is not considered in the computation of limit.

**Answer 5(b)**

(i) In terms of Section 186(5) of the Companies Act, 2013, prior approval of the Public Financial Institution (PFI) shall not be required where:

- the aggregate of the loan and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan guarantee or security proposed to be made or given by the Board, does not exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more under Section 186(2) of the Act; and
- there is no default in repayment of loan installments or payment of interest thereon as per the terms and conditions of such loan to the PFI.

However, in this case, for the Bunny Limited, the aggregate of the amount for which guarantee or security so far provided, along with the investments, proposed to be made is Rs. 180 Lakh (i.e. Rs. 100 Lakh existing guarantee + proposed investment of Rs. 80 Lakh) which has exceeded the limit of Rs. 168 Lakh (i.e. the limits specified under Section 186(2) of the Act).

Since the proposed investment will exceed the limits specified under section 186(2) of the Act, prior approval of the Public Financial Institution will be required.

(ii) Section 186(2) stipulates that no company shall directly or indirectly.

give any loan to any person or other body corporate;

give any guarantee or provide security in connection with a loan to any other body corporate or person; and

acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

Accordingly, Section 186 of the Companies Act, 2013 is applicable to both public and private companies.

Hence, no exemption is available to Bunny Ltd. in case it is a private company.

**Answer 5(c)**

It is clarified by way of clause (a) of Explanation to Section 186 of the Companies Act, 2013 that the expression "investment company" means a company whose principal business is the acquisition of shares, debentures or other securities.

Further, a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities:

- if its assets in the form of investment in shares, debentures or other securities constitutes not less than fifty percent of its total assets; or
- if its income derived from investment business constitutes not less than fifty percent as a proportion of its gross income.

From the above provisions, it is clear that even if a company satisfies any one out of two criteria, it would be treated as an investment company.

**Investment Test**

The total assets of Hunny Investment Pvt Ltd. as on 31.03.2023 is Rs.330 Lakh.

Investment in shares and debentures of a body corporate is Rs. 200 lakh which is more than 50% of the total assets.

### **Income Test**

Income derived from investment in shares and debentures is Rs. 30 Lakh which is less than 50% of the gross income of Rs. 100 Lakh

Since, Hunny Investment Pvt. Ltd satisfies the Investment Test, it is an Investment Company.

### **Answer 5(d)**

#### **Terms & Conditions for Small Shareholders' Director**

Section 151 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014 laid down the following terms and conditions for appointment of Small Shareholders Director (SSD), which include inter alia the following:

#### **Election of small shareholders director:**

A listed company, may upon notice of not less than:

- (a) One thousand small shareholders; or
- (b) one-tenth of the total number of such shareholders,

whichever is lower; have a small shareholder director elected by the small shareholder.

1/10<sup>th</sup> of the small shareholders (SS) would come to 2000. However, the notice has been given by more than 1000 small shareholders. Hence, they are entitled to make such requisition.

Whether mandatory:

A listed company may upon notice appoint Small Shareholder Director (SSD). A Small Shareholders' Director may be elected voluntarily by any listed company. Thus, a listed company may on its own, act to appoint a Small Shareholder's Director. In such a case, no notice from small shareholder(s) is required. The word used is "may" in Section 151 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014. Hence, it is not mandatory for the company to appoint SSD, even if the notice is received from the eligible SS.

Tenure of office and no retirement by rotation:

The tenure of small shareholder director shall not exceed a period of 3 consecutive years and he shall not be liable to retire by rotation. Further he shall not be eligible for re-appointment after the expiry of his tenure.

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

#### **Question 6**

- (a) You are the CFO of XYZ Textiles Limited, a listed company in Tamil Nadu. Pursuant to the applicable provisions of the Companies Act, 2013 and taking into account the requirement of SEBI Regulations, draft a board resolution for appointment of a whole-time company secretary of the company.

(5 marks)

- (b) Draft a specimen of notice of the Board Meeting considering the provisions of the Companies Act, 2013.

(5 marks)

- (c) (i) Draft a sample Board resolution for the approval and adoption of a new CSR policy.  
(ii) Draft a specimen Board resolution for approval of Board's Report.  
(3+2=5 marks)
- (d) Draft a Specimen of the minutes of Extra-Ordinary Meeting where Ankush was appointed as an independent director.  
(5 marks)

**Or (Alternate Question to Q. No. 6)**

**Question 6A**

- (i) The Board of Directors of the company presents the following financial data extracted from the company's financial statements as at 31st March, 2024 :

Particulars	₹ (Cr.)
Authorised equity share capital	240
Paid-up equity share capital	40
Debenture redemption reserve	40
Securities Premium Account	80
Revaluation Reserve	80
Profit and Loss (Loss)	(40)

Due to losses in the financial year 2023-24, the Board of Directors is exploring the option to pay the remuneration to the managing director of the company, not more than the remuneration that law permits for which the managing director agreed. You being a company secretary advise the Board of Directors the maximum remuneration payable to the managing director in case of losses or inadequacy of profits to the company without seeking approval of any other authorities.

(5 marks)

- (ii) Explain the compliance requirement for holding of annual general meeting (the AGM) of the company including the listed company and One Person Company as per the provisions of the Companies Act, 2013 and applicable Regulation of SEBI (Listing Obligations and Disclosure requirements) Regulations, 2015.  
(5 marks)
- (iii) Rohit, a director of a company to know the provisions of the Companies Act, 2013 relating to inspection and extract of minutes of the Board meetings by the director, member and other persons and preservation period thereof. Explain.  
(5 marks)
- (iv) Sunil, a shareholder (holding 15% shares) of JJ Chemicals Limited (the company) and other shareholders have lost confidence in the managing director (MD) of the company who is a director not liable to retire by rotation and was re-appointed as managing director for 5 years w.e.f. 1st April, 2024 in the last annual general meeting of the company held in 2023.

Sunil wants to know from you the procedure/steps to be taken by him and the company in this behalf.

(5 marks)

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

**Answer 6(a)**

**“RESOLVED THAT** Pursuant to the provision of section 203 (1) of the Companies Act, 2013 read with rule 8 and 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 and any other applicable provisions of the Act and Rules framed thereunder, including any amendments thereto or reenactment thereof from time to time, Mr. \_\_\_\_\_ Membership No. \_\_\_\_\_ of the Institute of Company Secretaries of India (ICSI) be and is hereby appointed as the “Company Secretary” of XYZ Textiles Limited (the Company) on the terms and condition including the terms of remuneration as per appointment letter placed before the meeting, and as recommended by the nomination and remuneration committee.”

**“RESOLVED FURTHER THAT** pursuant to regulation 6 and 30 read with clause 7 of para A of Part A of Schedule III of SEBI (Listing Obligation And Disclosure Requirement) Regulation 2015, Mr. \_\_\_\_\_ be and is hereby designated and appointed as the “Compliance Officer” of the company and authorised to make all the compliances as may be applicable to the company under the SEBI (Listing Obligation And Disclosure Requirement) Regulation 2015, various other SEBI Regulation, Securities Contract Regulation Act 1956, Industrial and labour laws and other laws as may be applicable to the Company from time to time.”

**“RESOLVED FURTHER THAT** the company secretary and compliance officer be and is hereby authorised to sign various documents and file forms/ returns on behalf of the company as may be necessary and to do all such acts, deeds, things, and matters incidental there to give effect to the aforesaid resolution.

**“RESOLVED FURTHER THAT** Mr. \_\_\_\_\_, Managing Director of the Company be and is hereby authorised to sign and submit necessary forms / returns for the appointment of company secretary with the Registrar of Companies, \_\_\_\_\_, and also be authorised to intimate the same to the appropriate authorities / regulatory bodies and to do all such acts and deeds as may be necessary in this regard.”

**Answer 6(b)**

Notice of the.....(insert sequence number of the meeting) Board Meeting of..... Pvt Ltd /Ltd having its registered office at.....

To,

Mr. / Ms. (Director Name)

..... (Address)

Dear Sir/Madam,

Pursuant to the requirement of Section 173 (3) of the Companies Act, 2013 read with applicable Secretarial Standards, notice is hereby given that .....(insert sequence number of the meeting) meeting of the members of the Board of Directors of the Company will be held on.....(Day of the week), the.....(Date) day of.....(Month),..... (year) at ..... (time) at..... (address of the venue of the meeting).

The agenda of the business to be transacted at the meeting, along with detailed notes thereon and requisite annexures are enclosed herewith.

You are requested to make it convenient to attend the meeting.

Directors may attend the meeting in person or through Video Conferencing / Other Audio Video Means (VC/ OAVM). A Director desirous of attending the meeting through VC/ OAVM should inform well in time so as to make suitable arrangements accordingly.

For..... (Name of the Company)

Sd/-

(Name)

(Designation)

Place:

Date:

Enclosure: Agenda of the business to be transacted at the meeting.

**Answer 6(c)**

**(i) Sample Board Resolution to approve and adopt a new CSR Policy**

“**RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and such other provisions as may be applicable and based on the recommendation of the CSR Committee, the Board of Directors of the company do and hereby approve a new CSR Policy in supersession of the existing CSR Policy dated ..... in compliance with the requirements under Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.

**RESOLVED FURTHER THAT** the new CSR Policy be and is hereby approved and signed by Mr./ Ms. \_\_\_\_\_ Director.

**RESOLVED FURTHER THAT** the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required to ensure compliance of the CSR Policy including disseminating the contents of revised policy on the website of the company.”

**(ii) Specimen Board Resolution for approval of the Board’s Report**

“**RESOLVED THAT** the Boards’ Report to be sent to the Shareholders of the company for the year ended 31st March..... prepared in accordance with the provisions of Section 134 of the Companies Act, 2013 together with all the Annexures thereto ( as per draft placed before the Board and initialed by the Chairman for identification purposes) be and is hereby approved and the same be signed by Shri..... Chairman of the company, or in his absence, by Shri..... Managing Director and Shri ..... Director for and on behalf of the Board of Directors of the company.”

**Answer 6(d)**

MINUTES OF THE PROCEEDINGS OF THE EXTRA ORDINARY GENERAL MEETING OF

(Name of the Company) HELD ON ..... (day).....(date) 20.....FROM .....

TO.....A.M./P.M AT.....(address).

The following were present:

1. Mr. A (in the Chair)

- 2. Mr. B (Director and Member)
- 3. Mr. C (Director)
- 4. Mr. F (Company Secretary)
- 5. (Members present in person) (state number)
- 6. .... (Members present by Proxy) {state number}

Mr. G, Partner of M/s, .....Chartered Accountants, Auditors of the Company,

**CHAIRMAN**

In accordance with Article ..... of the Articles of Association, Mr. A, Chairman of the Board of Directors took the Chair.

**Introduction**

The Chairman welcomed the Members and introduced the Directors seated on the Dias. The Chairman stated that Mr. and Mr.....Directors, could not attend the Meeting due to..... (explain the reason for absence).

**Quorum**

The Chairman stated that the requisite Quorum was present and called the meeting to order.

**Notice**

With the consent of the Members present, the Notice convening the Extra-Ordinary General Meeting of the Company was taken as read.

The business of the Meeting, as per the Notice thereof, was thereafter taken up item-wise.

Appointment of Independent Director Proposed by : Mr. .... Seconded by : Mr. ....

The Chairman explained the profile of Mr. Ankush to the members. He explained that in order to broadbase the board, it was proposed to appoint Mr. Ankush , a legal expert as an Independent Director.

The following Resolution having been proposed and seconded respectively by the aforementioned Members was put to vote as an Ordinary Resolution:

**"RESOLVED THAT** pursuant to the provisions of Sections 149, 150(2), 152 and any other applicable provisions of the Companies Act, 2013 and any other rules made there under read with Schedule IV to the Companies Act. 2013, approval of the Company be and is hereby accorded for appointment of Mr. Ankush (DIN No.....), as an Independent Director of the Company to hold the office for a period of 3 years i.e. up to ..... AND THAT by virtue of sub-section (13) of Section 149 of the Companies Act, 2013 he shall not be liable to retire by rotation."

The Chairman enquired from the Members present if there were any clarifications required on the same. Since none of the Members required any clarification, the Ordinary Resolution was put to vote and on a show of hands , declared carried by the requisite majority.

**CLOSE OF THE MEETING**

There being no other business to transact the Meeting closed with a vote of thanks to the Chair.

Date:.....

Place:.....

CHAIRMAN

**Or (Alternate Question to Q. No. 6)****Answer 6A(i)**

Section 197 read with Section 198 and Schedule V of the Companies Act, 2013 deals with the provisions related to managerial remuneration.

As per Section 197 (3) of the Act, notwithstanding anything contained in sub-sections 197 (1) and 197(2), but subject to the provisions of Schedule V, if in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manager, or any other non-executive director, including an independent director by way of remuneration any sum exclusive of any fees payable to directors under 197 (5) hereunder except in accordance with the provisions of Schedule V whereunder slab- wise limit on managerial remuneration on the basis of the effective capital of the company has been stipulated.

Computation of Effective Capital of Company for determining managerial remuneration:

Particulars	Rs. (Cr.)
Paid-up equity share capital	40
Debenture redemption reserve	40
Securities Premium Account	80
Revaluation Reserve (excluded)	----
Profit and Loss (Loss)	(40)
<b>Effective Capital</b>	<b>120</b>

As per the limit stipulated if the effective capital is INR 100 crores and above but less than INR 250 Crores the maximum yearly remuneration payable to the managerial persons shall not exceed INR 120 Lakhs.

In the given scenario, the effective capital of the company is INR 120 crores. Hence, the company can pay remuneration to the managing director maximum up-to Rs. 120 lakhs without seeking approval of shareholders by passing a special resolution.

**Answer 6A(ii)****Holding of Annual General Meeting (Section 96 of the Companies Act, 2013)**

1. Annual general meeting should be held once in each calendar year.
2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
3. Subsequent annual general meeting of the company should be held within 6 months from the date of closing of the relevant financial year.
4. The gap between two annual general meetings shall not exceed 15 months.
5. Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.

6. Annual General Meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

**Additional Compliance for listed Companies:** - Additionally, for listed entities, Regulation 44(5) and 44(6) of SEBI (LODR) Regulations, 2015 provides that the top 100 listed entities by market capitalization, determined as on March 31st of every financial year shall hold their annual general meeting within a period of five months from the date of closing of the financial year. The top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings.

Explanation: The 100 entities shall be determined on the basis of market Capitalization, as at the end of the immediate previous financial year.

**Exemption to OPC:** As provided in sub-section (1) of section 96, one person company is not required to hold Annual General meeting

As per 1.1 of SS-2 provides that the Board shall, every year, convene or authorize convening of meeting of its members called the Annual General Meeting to transact items of ordinary business specifically required to be transacted at an annual general meeting as well as special business, if any. If the Board fails to convene its Annual General Meeting in any year, any member of the company may approach the prescribed authority which may then direct the calling of the Annual General Meeting of the company.

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

#### **Inspection and Extracts of Minutes of Board meetings**

- The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors. Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book. However, certified copies of any Resolution passed at a Meeting may be issued even earlier, if the text of that Resolution had been placed at the Meeting.
- A Director is entitled to inspect and receive, a copy of the Minutes of a Meeting held before the period of his Directorship. A Director is entitled to inspect and receive a copy of the signed Minutes of a Meeting held during the period of his Directorship, even if he ceases to be a Director.
- The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties.
- While providing inspection of Minutes Book, the Company Secretary or the official of the company authorised by the Company Secretary to facilitate inspection shall take all precautions to ensure that the Minutes Book is not mutilated or in any way tampered with by the person inspecting.

A Member of the company is not entitled to inspect the Minutes of Meetings of the Board for the purpose and shall be kept in the registered office or such place as Board may decide.

#### **Preservation of Minutes**

The minutes books of the Board and committee meetings shall be preserved permanently and kept in the custody of the Company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide

Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.

The above provisions can be explained to him.

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

Removal of a non-rotational managing director is possible, since section 169 of the Companies Act, 2013 empowers the members to remove any director, whether he is rotational or non-rotational director, or managing director, whole time director or a non-executive director.

#### *Procedure/Steps to be taken by Mr. Sunil*

Mr. Sunil shall have to give a special notice to the company in accordance with the provisions of Section 115 of the Companies Act, 2013. In the special notice, Mr. Sunil shall propose a resolution for removal of the managing director. The special notice must be - (i) given to the company not earlier than 3 months before the date of the general meeting but at least 14 days before the general meeting (excluding the day on which such notice is given and the day of the general meeting); (ii) signed by member(s) holding not less than 1 % of total voting power or member(s) holding shares on which an aggregate sum of not less than five lakh rupees has been paid up on the date of the notice..

#### *Procedure/Steps to be taken by the company*

- (a) On receipt of notice by the company: The Company shall immediately after the receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.
- (b) Publication of notice: Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated. Such notice shall also be posted on the website, if any, of the Company. Such notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.
- (c) On receipt of special notice, the company shall send a copy to the managing director concerned.
- (d) The concerned Managing director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.
- (e) Managing Director concerned if make representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,-
  - (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
  - (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the concerned director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.
- (f) The general meeting shall be held.
- (g) The managing director shall have a right to be heard at the meeting. The right to make an oral representation is in addition to written representation.

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# SETTING UP OF BUSINESS, INDUSTRIAL AND LABOUR LAWS

## GROUP 1 PAPER 3

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-I

#### Question 1

A and B are the two experienced professionals in the Information Technology (IT) industry.

They have decided to start their own software development business. They aim to provide innovative software solutions to various businesses while fostering a culture of creativity and collaboration within their organization. As they embark on their entrepreneurial journey, they encounter various challenges and opportunities along the way.

A and B need to decide on the legal structure for their business. They are considering forming a Limited Liability Partnership (LLP) to protect their personal assets and enjoy tax benefits. They get the name, "Technical Solutions LLP" reserved by the jurisdictional Registrar. After filing the prescribed e-form, FiLLiP along with the required documents attached thereto, "Technical Solutions LLP" is registered.

"Technical Solutions LLP" requires initial capital to cover the startup costs, such as office space, equipment, and hiring employees. By leveraging a combination of personal resources, support from friends and family, investments from angel investors, crowdfunding, and strategic partnerships, A and B secure the necessary startup funds for "Technical Solutions LLP." A and B gather the necessary documents for GST registration of "Technical Solutions LLP". After filling the GST registration application form on the GST portal and uploading the required documents as specified in the application form, the GST Registration Certificate of "Technical Solutions LLP" is received electronically through the GST portal.

With a growing demand for its services, "Technical Solutions LLP" embarked on a phase of aggressive expansion, opening new offices in strategic locations and investing in infrastructure and technology upgrades. It introduced innovative solutions leveraging emerging technologies such as Artificial Intelligence (AI), blockchain, and cloud computing to stay ahead of the competition. Recognizing the need for additional capital to fuel its ambitious growth plans, A and B deliberated on the possibility of converting the LLP into a private limited company to raise capital, enhance visibility, and facilitate future expansion.

After careful consideration and thorough preparation, "Technical Solutions LLP" has initiated the process of converting into a private limited company, adhering to regulatory requirements and compliance standards. The name approval for the company, "Technical Solutions Pvt. Ltd." has been received from the Registrar of Companies. After filing the required form along with the necessary documents, the company, Technical Solutions Pvt. Ltd. is incorporated under the Companies Act, 2013 by taking over the business of "Tech Solutions LLP". In view of the above, answer the following :

- (a) Write down the benefits of Limited Liability Partnership (LLP) being considered by A and B while deciding the legal structure for their business.
- (b) Describe the documents that are required to be attached with the prescribed e-form FiLLiP for getting registration of "Technical Solutions LLP".
- (c) What are the key considerations for "Technical Solutions LLP" when seeking investments from angel investors to finance its operations ?
- (d) What documents are required to be uploaded by A and B with the GST registration application form on the GST portal for GST registration of "Technical Solutions LLP" ?
- (e) Describe the conditions required to be fulfilled for conversion of LLP "Technical Solution LLP" into a private limited company. "Technical Solutions Pvt. Ltd."

(3 marks each)

### Answer 1(a)

The given benefits of LLP can be considered by A and B while deciding the legal structure for their business:

**Dual benefits:** Limited Liability Partnership is an alternate corporate business entity that provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually arrived agreement, as is the case in a partnership firm, introduced in India by way of Limited Liability Partnership Act, 2008.

**Cost effective:** LLP is relatively a cheaper approach to incorporate as compared to a Private Limited Company and requires fewer compliances; its main improvement over General Partnership is that it limits the liabilities of its partners to their contributions to the business and offers each partner protection from negligence, misdeeds or incompetence of the other partners.

**Suitable for Non-Scalable Businesses:** If one is running a business that is unlikely to require equity funding, one may register an LLP as it combines several benefits of the private limited company and general partnership. It has limited liability, like a private limited company, and has a simpler structure, like a general partnership.

**Fewer Compliances:** The Ministry of Corporate Affairs (MCA) has given some concessions to the LLP. For example, an audit needs to be performed only if in any financial year the turnover is greater than Rs. 40 lakhs or whose contribution is more than Rs. 25 lakhs. Furthermore, whereas all structural changes need to be communicated to the RoC in the case of private limited companies, the requirement is minimal for LLPs.

**Number of Partners:** There is no limit to the number of partners there may be in a LLP. If one is building a large advertising agency, for example, one need not worry about any cap on the number of partners.

### Answer 1(b)

Section 11(2) of the LLP Act, 2008 governs the requirement of incorporation document.

Filing of incorporation documents in LLP Portal:

Once the LLP reserves its name, LLP must file its incorporation in web-based form FiLLiP (Form for Incorporation of Limited Liability Partnership) with ROC.

Following documents are required to be attached along with the prescribed e-form FiLLiP for getting registration of "Technical Solutions LLP":

- Proof of Identity of Partners
- Residential proof of Partners
- Passport Size photograph of Partners
- Proof of Address of Registered office of LLP
- Subscription sheet signed by the promoters
- Digital Signature Certificate
- Latest Utility bill of registered office (not later than 2 months)
- NOC of owner of registered office, if taken on rent / lease
- Notice of Consent & Appointment of Designated Partners with their personal details
- Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner.

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

The key considerations for “Technical Solution LLP” when seeking investments from angel investors to finance its operations are as follows:

Angel investors are usually individuals or a group of industry professionals who are willing to fund the venture in return for an equity stake. As regulation 19F of SEBI (Alternative Investment Funds) Regulations, 2012, SEBI has made the following restrictions applicable to angel funds investing in an Indian company:

- (1) Angel funds shall invest in startups which:
  - (c) are not promoted or sponsored by or related to an industrial group whose group turnover exceeds Rs.300 crore; and
  - (d) are not companies with family connection with any of the angel investors who are investing in the company.
- (2) Investment by an angel fund in any venture capital undertaking shall not be less than Rs.25 Lakhs and shall not exceed Rs.10 Crores.
- (3) Investment by an angel fund in the venture capital undertaking shall be locked-in for a period of one year.
- (4) Angel funds shall not invest in associates.
- (5) Angel funds shall not invest more than twenty-five per cent of the total investments under all its schemes in one venture capital undertaking:

Provided that the compliance to this sub-regulation shall be ensured by the Angel Fund at the end of its tenure.
- (6) An angel fund may also invest in the securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and the Board from time to time.

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

The following documents are required to be uploaded by A and B with GST registration application form on the GST portal for GST registration of “Technical Solution LLP”:

1. Copy of Certificate of Incorporation of LLP & LLP Agreement

2. Permanent Account Number (PAN) of LLP
3. Consent / Resolution by designated partners for obtaining GST Registration
4. Declaration / Authorization to Authorized Signatory
5. Bank Account Details: Scanned copy of a cancelled cheque containing name of the Business entity, Bank Account No., MICR, IFSC and Branch details.
6. Photos of all Partners
7. PAN Card / Aadhar Card of all Partners

### Answer 1(e)

Following conditions are to be fulfilled for conversion of LLP "Technical Solution LLP" into a private limited Company "Technical Solutions Pvt Ltd":

- All the partners should have approved the conversion of LLP.
- The LLP should have complied with all the required returns and compliances.
- Publication related to such conversion of LLP into a Private Company, in at least two newspapers, one in English Language and another in any vernacular language newspaper of the place of registered office.
- The Limited Liability Partnership must have at least two partners who are required for incorporation of a Private Limited company.
- There should be no open charges for or against the Company.

### Question 2

- (a) Robinhood against Hunger is a registered society under Society Registration Act, 1908. Being a non-profit organization, the society possesses the Tax Exemption Certificate under section 12 of Income Tax Act. The Society is also recognized NGO under section 80G of the Income Tax Act. The Promoters have decided to convert the society into Section 8 Company under Companies Act, 2013, so that food items can be delivered free of cost to poor and needy peoples in State of Madhya Pradesh under mission of "Koi Nahi Bhookha Soyega". The Society is also planning to start its own manufacturing unit for making of various types of food items. The automatic food processing unit(s) will be setup in capital of the State at primary level.

Being a Company Secretary, suggest that what are benefits available to section 8 Company. Also highlight that is there any additional requirement for license to ensure the Food Safety and Standardization of food for health.

(3 marks)

- (b) PNC Ltd. is a company limited by guarantee and not having a share capital. The Articles of Association (AOA) of the company give any person a right to participate in the divisible profits of the company otherwise than as member. Examine the validity of such provisions in the AOA of the company.

(3 marks)

- (c) A and B, close friends who graduated from a renowned college, want to start an 'Other Service Providers' (OSP) company for commercial purposes in Rewari, Haryana. What licenses and documents are needed to obtain to operate as a licensed OSP, similar to other service providers ?

(3 marks)

(d) PQR Ltd. is listed entity in Textile Sector. Out of total revenue, 40% revenue is generated from export sales to New York City. The Company sells its item in New York through local distributors under tie-up. However, as per the agreement. The distributors have rights to use his own logo on the item purchased from PQR Ltd. The Company is planning to incorporate a subsidiary company in City of New York for better branding and direct customer sales. The Company is also planning to set up a manufacturing unit nearby New York City under its subsidiary.

As per the law prevailing in USA, what are the requirements for workers' compensation and disability insurance.

(3 marks)

(e) ABC Financial Services, a community-based financial institution, is exploring the incorporation of a Nidhi Company under Nidhi Rules, 2014. The institution seeks your advice on the benefits of incorporating a Nidhi Company. Advise ABC Financial Services.

(3 marks)

### Answer 2(a)

The Companies registered under the Section 8 of Companies Act, 2013 can avail the following benefits:

- Access to Tax benefits: Since Section 8 companies are charitable institutions, they have access to the various exemptions available under the Income Tax Act. Section 80G of the Income Tax Act renders plenty of tax-related benefits to these companies.
- Zero Stamp Duty: The Section 8 Companies are not liable to pay stamp duty on the Memorandum of Association (MOA) and Articles of Association (AOA), unlike other entities incorporated under the Companies Act, 2013.
- Minimal share capital: Unlike private limited, public limited, or OPC, a Section 8 company can be set up without the requirement of having minimum paid-up share capital of the Company.
- Exempted from suffix/prefix of name: Section 8 companies do not have the compulsion to affix the term like Limited or Private Limited in their name. These entities are registered with limited liability.
- Separate legal entity: Section 8 company possesses a distinct legal status which implies that entity's existence is independent of its members. The section 8 entity has perpetual existence.
- Improved Credibility: The flexible and transparent constitutional framework of Section 8 companies allows them to garner better credibility than other types of NGOs such as Society and trust.
- Privileges: Section 8 companies have been granted total/partial exemptions from various sections of the Companies Act, 2013 vide Notification No. F. No. 1/2/2014-CL.I dated June 5, 2015.

FSSAI Registration or License (In case of business of edibles): This is the national authority for ensuring the safety and standardization of food items in India. FSSAI stands for Food Safety and Standard Authority of India. All retail establishments trade outlets, kiosks, eateries, caterers, and cloud kitchens must follow to FSSAI regulations, get licenses, and periodically renew their registrations. Under FSSAI, the license or registration is divided into three categories namely:

- FSSAI Central License
- FSSAI State License
- FSSAI State Registration

Thus, Robinhood against Hunger is required to obtain FSSAI license for the manufacturing various types of food items.

### **Answer 2(b)**

According to section 4(7) of the Companies Act, 2013, any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

As per Section 6 of the Companies Act, 2013, any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

On basis of the above provision in the AOA of the PNC Ltd to give any person a right to participate in the divisible profits of the Company otherwise than as member is invalid.

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

Business entities which provide internet services or engaged in commercial communications i.e. call center, BPO, Tele-education, Tele-banking, tele networking, e-commerce and other IT enabled services who are categorised as 'Other Service Providers' (OSP) under New Telecom Policy, 1999, must obtain a telecom license from Department of Telecommunication (DoT) under Ministry of Communications, Government of India.

The telecom license entitles the entities to provide telecommunication services in India. OSP license shall be categorized into two types:

1. Domestic OSP - OSP providing services to clients located within national boundaries of India
2. International OSP - OSP providing services to clients outside India.

So, considering the above facts, A and B require Domestic OSP as they want to setup business in Rewari, Haryana which is in India.

*Process:*

A company registered under the Companies Act, 2013 or under any other previous law i.e., the Companies Act, 1956 or LLP registered under Limited Liability Act, 2008 or Partnership Firm or organisations registered under Shops and establishment Act are eligible to obtain OSP license.

a. To Obtain a OSP license, the Company or LLP shall file an Application in specified Form to the DoT through online on DoT portal.

b. OSP license is a location specific and can have multiple registrations for each such site.

*Documents required to obtain license:*

- Certificate of Incorporation issued by ROC;
- Memorandum and Articles of Association;
- Copy of LLP Agreement;
- Board resolution Power of Attorney authorizing the Authorized signatory with attested signature;
- Resolution passed by all designated partners or Partners as per provisions of LLP Act;
- A Note on nature of business or activities of the proposed OSP;
- List of present directors of the Company;

- List of present designated partners of LLP;
- Present Shareholding pattern of the Company;
- Present Shareholding pattern of LLP.

All the documents must be certified with seal by company secretary or one of Directors or Statutory Auditors or public notary in case of Company.

All documents must be certified with seal by either designated partner or all partners or statutory Auditors or public notary in case of LLP.

The OSP license is valid for a period of 20 years and can be extended for further period of ten years from the expiry of twenty years.

State level Approval from the respective State Industrial Department.

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

The requirements for Workers Compensation and disability insurance as per the laws prevailing in USA are as follows:

As New York employers, the LLC founders must obtain and maintain workers' compensation insurance and disability insurance for its employees by purchasing a workers' compensation insurance policy and a disability benefits insurance policy from an authorized private insurance carrier or through the NYS Insurance Fund (or by self- insurance for workers' compensation).

The company's *federal Employer Identification Number ("EIN")* is the company's primary identification with respect to communications with the Workers' Compensation Board or by becoming a member of a group self- insurer authorized by the board. The company must give its EIN to its insurance carrier when obtaining or maintaining its workers' compensation or disability coverage. Workers' compensation insurance floor is calculated using each employee's risk classification, salary, and total payoff.

Each "covered employer" must post and maintain at the place of business a prescribed form, Notice of Compliance, Form DB-120, stating that the provisions have been named for the payment of disability benefits to all eligible employees. An employer who has employed in New York State one or more employees at least 30 days in any calendar year is a "covered employer" subject to the Disability Benefits Law after the expiration of four weeks following the 30<sup>th</sup> day of such employment (WCL §202). These 30 days of employment need not be consecutive days.

### **Answer 2(e)**

Benefits of incorporating a Nidhi Company under Nidhi Rules, 2014 are as follows:

1. *Mobilization of Small Savings:*

A Nidhi mobilizes small savings, mostly of the middle class and disburses loans to eligible borrowers. Owing to their small size and closeness to the customers, disbursement of loans is speedy. This is especially useful in case the borrower is in urgent needs of funds.

2. *Minimal risk of Loan Repayment:*

The repayment is guaranteed, as the loans are secured and due to peer pressure, borrowers ensure that loan is repaid on due dates.

3. *Higher return on investment:*

Nidhis offer a higher rate of interest on deposits. This makes it an attractive investment opportunity for people, especially the senior citizens.

4. *Professional Management:*

The Board of Directors of a Nidhi normally consists of senior persons who have experience in handling finances and who are well respected in social circles. This lends credibility to the institution and instills confidence in the minds of borrowers and depositors.

ABC Financial services is advised accordingly.

**Question 3**

- (a) "The degree of control and management that an entrepreneur desires to have over business affects the choice of form of organization."

In light of above statement, explain how control and management factor is basic factor to choose the suitable form of organization.

(3 marks)

- (b) A group of residents in a housing complex in Delhi who have recently taken possession of their homes from the builder and are dissatisfied with the poor maintenance of the complex by the builder. They wish to create a legal entity specifically for the maintenance of the housing complex. What kind of legal entity would be best suited for them and what are the basic requirements for the creation of such an entity ?

(3 marks)

- (c) Renewable Power Ltd. (RPL) is a leading renewable energy developer with expertise in solar and wind power generation. RPL has identified Wind Power Pvt. Ltd. (WPPL) as a potential partner to establish an equity-based joint venture focused on developing large-scale renewable energy projects in the country. RPL approaches you to seek your advice on the key characteristics of equity-based joint venture. Advise RPL.

(3 marks)

- (d) J and K are brothers and running the traditional business for production of snacks and namkin items under brand of "Rajaram". The business organization is in form of Private Limited Company and both hold equal shareholding (50 : 50). Due to sudden death of J, there is need to convert the private company into (One Person Company) OPC, as there being no successor of J.

What types of forms along with attachments are required to be filed with Registrar of Companies, Ministry of Corporate Affairs for conversion of Private Company into OPC.

(3 marks)

- (e) A Company registered in Japan had opened the Project Office for setup and commissioning of Coal based Power Plants in India. Due to change in Government policy and promotion of Solar Power projects and other power plants based on renewable energy, the Project Office is not needed. The Nodal Officer in India is instructed by the Management to close the Project Office after due compliances under the Law. Describe the process for closure of Project Office in India opened by foreign entity.

(3 marks)

**Answer 3(a)**

**Degree of Control and Management:** The degree of control and management that an entrepreneur desires to have over business affects the choice of form of organization.

In sole proprietorship and OPC: ownership, management, and control are completely fused, and therefore, an entrepreneur has complete control over his business.

In partnership: management and control of business is jointly shared by the partners and their specific rights, duties and responsibilities would be documented through incorporating various clauses in this regard in the partnership deed. They have equal voice in the management of partnership business except where they agree to divide among themselves the business responsibilities in a different manner. Even then, they are legally accountable to each other.

In a company: However, there is divergence between ownership and management, the management and control of the company business is entrusted to the Board, who are generally the elected representatives of shareholders.

Thus, a person wishing to have complete and direct control of business prefers proprietary organization rather than partnership or company. If he is prepared to share it with others, he will choose partnership. But, if the activities are large, professional managers are required to handle the day-to-day affairs and there is need for corporate structure and management, he will prefer the company form of organization.

### **Answer 3(b)**

The residents of the housing complex can form a 'Resident Welfare Association' (RWA) or 'Apartment Owners Association' (AOA), which are types of legal entities that are best suited for their needs. These entities are designed to ensure proper maintenance and administration of the society.

The basic requirements for the formation of an RWA or AOA are as follows:

1. *Membership*: All the residents of the society can become members of the association.
2. *Management Committee*: A management committee needs to be formed which includes positions like President, Secretary, and Treasurer.
3. *Registration*: The association needs to be registered under the Societies Registration Act, 1860 or under the Delhi state's Apartment Ownership Act or Housing Cooperative Society.
4. *Bye-Laws*: The association should have its own bye-laws which govern the functioning of the association. These bye-laws should be in compliance with the Societies Registration Act, 1860 or the Delhi State's Apartment Ownership Act.
5. *Meetings*: Regular meetings of the members and the management committee should be held as per the bye-laws of the association.

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

The key characteristics of equity-based joint ventures are as following:

- a. There is an agreement to either create a new entity or for one of the parties to join into ownership of an existing entity
- b. Shared Ownership by the parties involved
- c. Shared management of the jointly owned entity
- d. Shared responsibilities regarding capital investment and other financing arrangements.
- e. Shared profits and losses according to the Joint Venture Agreement.

Renewable Power Ltd is advised accordingly.

**Answer 3(d)**

In order to convert Private Company into (One Person Company) OPC after calling the Board Meeting, Meeting of Shareholders/Members and passing of the necessary resolution, following forms are required to be filed: -

1. Filing of e-form MGT-14: In case of conversion of Company into One Person Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly, as per section 117(3) (a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting.

Following documents are required to be attached with e-form MGT-14:

- a. Notice of general meeting along with copy of explanatory statement under section 102;
  - b. Certified true copy of special resolution;
  - c. Altered memorandum of association;
  - d. Altered articles of association;
  - e. Certified true copy of board resolution may be attached as an optional attachment.
2. Filing of e-form INC-6: The company shall file an application in e-Form No. INC-6 for its conversion into One Person Company along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 by attaching the following details or documents, namely: -
    1. altered e-MOA and e-AOQA;
    2. copy of NOC of every creditor with the application for conversion;
    3. affidavit of directors confirming that all the members of the company have given their consent for conversion.
    4. Affidavit
    5. Certified true copy of minutes, list of creditors and list of members.
    6. Copy of NOC of every creditor
    7. Consent of the nominee in Form No. INC-3 along with all enclosures
    8. Copy of PAN card of the nominee and member.
    9. Proof of identity of the nominee and member.
    10. Residential proof of the nominee and member.

Any other information can be provided as an optional attachment(s).

3. Issuance of New Certificate of Incorporation: On approval of Form MGT-14 and Form INC-6, the Registrar will issue a fresh Certificate of Incorporation with the Changed name to the applicant company or the Conversion of Company into OPC.

**Answer 3(e)**

The process for Closure of Project office in India opened by foreign entity is described as follows:

The Requests for closure of the Project Office (PO) and allowing the remittance of winding up proceeds of PO may be submitted to the designated AD Category – I bank by the BO/ LO/ PO or their nodal office, as the case may be.

The application for winding up may be submitted along with the following documents:

- a) Copy of the Reserve Bank's/AD Category-I bank's approval for establishing the PO.
- b) Auditor's certificate:
  - (i) indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant and indicating the manner of disposal of assets;
  - (ii) confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc. of the office have been either fully met or adequately provided for; and
  - (iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.
- c) Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the BO / LO/ PO and there is no legal impediment to the remittance.
- d) A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the BO /LO in India, wherever applicable.
- e) The designated AD Category - I banks have to ensure that the BO / LO/ PO had filed their respective AACs.
- f) Any other document/s, specified by Reserve Bank of India / AD Category- I bank while granting approval.

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

#### Question 4

- (a) OTM Financial Services Limited got the license to operate the Payment Bank in India from RBI. As per the terms of the license, where compliances including KYC verification are required to be complied with strictly from time to time. OTM Financial Services Limited made various non-compliances and accordingly lot of restrictions and penalties were imposed by RBI.

Thereafter, RBI approved a Scheme by which the payment bank may be transferred to any Public Sector Undertaking (PSU).

A leading PSU in financial sector is interested to acquire the business of OTM Financial

Services Limited. Before making any offer, the Management of the Bank requires the check points to be considered as other terms and condition for running the business of payment bank. Prepare a note.

(3 marks)

- (b) AB Handicrafts Pvt. Ltd. is a family-owned company based in Jaipur, specializing in the manufacturing and export of handcrafted textiles and home decor items. The company has been operating for the past 15 years and has established itself as a prominent player in the handicrafts industry. The company seeks professional advice on the criteria for classification of Micro, Small and Medium Enterprises. Advise AB Handicrafts Pvt. Ltd.

(3 marks)

- (c) XYZ Solutions Pvt. Ltd. is a newly established technology company based in Bengaluru, India. The company specializes in developing AI-powered software solutions for healthcare

providers. As part of its growth trajectory, XYZ Solutions Pvt. Ltd. is exploring the benefits available to startups under the Startup India Program. Advise the company about the benefits given to entrepreneurs establishing startups.

(3 marks)

(d) MN Ltd. is a newly incorporated company intends to carry on the business of international trade activities in India. The company seeks your guidance on the requirement of obtaining an Import Export Code (IEC). Advise MN Ltd. on the requirement of IEC.

(3 marks)

(e) Differentiate between Partnership Agreement and Trust Deed.

(3 marks)

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

**Question 4A**

(i) ABC Ltd. is considering expanding its operations into Singapore due to the country's favourable business environment. The company aims to establish a subsidiary in Singapore to tap into the region's growing market and to benefit from Singapore's pro-business policies. ABC Ltd. seeks your advice on the process and requirements for incorporating a company in Singapore. Advise ABC Ltd.

(ii) "While every startup has its unique journey to becoming a unicorn, the minimum and maximum time taken by a startup to become a unicorn are 6 months and 26 years, respectively."

In light of above statement, define the term 'unicorn'. Is a start-up different from Entrepreneurship ? Answer.

(iii) "ESDP scheme aims at promoting new enterprises, capacity building of existing MSMEs and inculcating entrepreneurial culture in the country."

Prepare a note on above statement.

(iv) What are the factors to be considered by a Secretarial Auditor while segregating the applicability of Specific Law and General Laws.

(v) Enumerate the specific laws and regulations that are applicable to "Housing Finance Companies" in India.

(3 marks each)

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

**Answer 4(a)**

The other terms and conditions for running the business of payment bank are as follows:

- To be registered as a public limited company under the Companies Act, 2013.
- Payment Banks cannot form subsidiaries.
- For the first five years, the promoters stake to remain at 40% at minimum.
- Foreign shareholding will be allowed in these banks as per extant FDI norms.
- The voting rights will be regulated as per provisions of The Banking Regulation Act 1949. [Voting rights are restricted at 10% for any one share holder. RBI has the discretion to raise this to 26% on merits.]

- If there is any acquisition of more than 5% shares this will require prior RBI approval.
- The majority of the bank's board of directors should consist of independent directors, appointed according to RBI guidelines.
- The bank should be fully networked from the beginning. (Initially, the deposits will be capped at Rs.1,00,000 per customer, but later it may be raised on the basis of performance of the bank.)
- No lending activity is permitted. Bank can accept utility bills.
- A quarter of its branches should be in unbanked rural areas.

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

The Central Government vide Notification S.O. 1702(E) dated 01.06.2020 notifies the criteria for classification of Micro, Small and Medium Enterprises. Under the new definition, there will be no more distinction between Manufacturing and Service MSMEs.

- (i) a micro enterprise, where the investment in Plant and Machinery or Equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
- (ii) a small enterprise, where the investment in Plant and Machinery or Equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees;
- (iii) a medium enterprise, where the investment in Plant and Machinery or Equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees.

AB Handicrafts is advised accordingly.

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

Start-up India is a government initiative aimed at fostering entrepreneurship and promoting innovation in India. Some of the benefits available to startups under the Start-up India program include:

1. *Simplified Compliance*: Startups are provided with a simplified regulatory framework, reducing the regulatory burden and allowing them to focus more on their core business activities.
2. *Tax Exemption*: Eligible startups can avail themselves of income tax exemption for a specified period, typically the first three consecutive years out of their first ten years of operation.
3. *Self-Certification*: Startups can self-certify compliance with labor and environmental laws for up to three years, reducing regulatory hassle.
4. *Faster Patent Examination*: Startups can expedite the patent application process through fast-track examination, reducing the time and cost involved in securing patents.
5. *Access to Funding*: Startups can avail themselves of various funding schemes and incentives provided by the government and other agencies to facilitate access to finance.
6. *Intellectual Property Rights Support*: Startups can receive support for filing and prosecuting patents, trademarks, and designs through government schemes.
7. *Startup India Hub*: Startups have access to an online platform, the Startup India Hub, which provides resources, networking opportunities, and mentorship support.
8. *Government Procurement*: Startups are given preference in government procurement, allowing them to access a significant market and gain visibility.

- 9. *Incubation Support:* Startups can benefit from incubators and accelerators supported by the government, providing infrastructure, mentorship, and networking opportunities.
- 10. *Innovation and Research Support:* Startups can access government grants and schemes aimed at promoting innovation, research, and development activities.

These benefits are aimed at creating a conducive environment for startups to thrive and contribute to economic growth and job creation in India.

XYX Solutions Pvt Ltd is advised accordingly.

**Answer 4(d)**

Import Export Code (IE Code) is a key business identification number which is mandatory for exporting or importing goods. It is a 10-digit code which is issued by the Directorate General of Foreign Trade (DGFT), Ministry of Commerce and Industry.

However, for services exports, IEC shall be not be necessary except when the service provider is taking benefits under the Foreign Trade Policy.

IE code has lifetime validity.

Importers are not allowed to proceed without this code and exporters can't take benefit of exports from DGFT, customs, Export Promotion Council, if they don't have this code.

The IE Code must be quoted by importers while clearing customs.

Also, banks require the importers IE Code while sending money abroad. For exporters, IE Code must be quoted while sending shipments and banks require the exporters IE Code while receiving money from abroad.

The nature of the firm obtaining an IEC may be any of the follows- "Proprietorship, Partnership, LLP, Limited Company, Trust, HUF and Society." Consequent upon introduction of GST, IEC number is the same as the PAN of the firm. The IEC would be separately issued by DGFT.

MN Ltd is advised accordingly.

**Answer 4(e)**

Partnership Agreement	Trust Deed
1.Partners, as mentioned in the agreement runs the partnership firm. The procedure to admit a partner in the firm mentioned in the deed.	1. Trustees are generally appointed or elected. Procedure to elect/appoint the trustees is set out in the Trust Deed
2.A partnership deed can be between two or more persons. Maximum number of partners in a partnership firm can be 50 partners.	2. Three parties must be involved with any deed of trust: <i>Trustor:</i> This party is the borrower. <i>Atrustor</i> is sometimes called an obligor. <i>Trustee:</i> As a third party to a deed of trust, the trustee holds the property's legal title. <i>Beneficiary:</i> This party is the lender.

3. The deed may mention a fixed term of partnership or for a specific undertaking, or may mention the condition of dissolution by notice of intention to dissolve, if mutually agreed by the partners.	4. Trust deed can provide for trust to be wound up within certain number of years.
5. The deed states the rights and duties of the Partners. Partners owe a fiduciary duty to each other, based loyalty, trust and confidence	5. The Trust Deed states the rights and duties of the Trustees as well as Beneficiaries. Trustees have fiduciary duties to beneficiaries
6. Expectations of partner are more limited to financial success of business ventures. More easily measured.	6. Expectations of trustees can be high difficult to satisfy beneficiaries with so many choices on where to spend income.

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

**Answer 4A(i)**

The Accounting and Corporate Regulatory Authority (ACRA) is the national regulator of business, public accountants and corporate service providers in Singapore.

1. *Incorporation is done through Bizfile+, an electronic filing system.*

The process starts with new company name application. The application for approval and reservation of a company name is to be submitted online at bizfile.gov.sg. An application fee of SGD 15 is payable for each approved company name. Once the application is submitted, the applicant can select to either pay the fee and continue with the incorporation later, or to immediately proceed to incorporation application.

Name application can be approved within a few minutes from payment if the name is available. However, it may take between 14 working days to 2 months if the application needs to be referred to another agency for approval or review. The lodger can proceed to register the business immediately after the name application is approved.

2. *Once a name has been approved, it will be reserved for 120 days.*

As of 2 June 2017, every newly incorporated business receives a free copy of its Business Profile upon the successful filling up of the incorporation forms and paying the incorporation fee.

The processing time is about 15 minutes from the time of successful submission of all documents and all information, and the registration fee payable is SGD 300. The ACRA will issue a notice of incorporation via electronic mail to the law firm or professional firm engaged for the purposes of incorporation upon the successful incorporation of the company together with the registration number of the company.

ABC Ltd is advised accordingly.

**Answer 4A(ii)**

A unicorn is a term used to indicate a privately held startup company with a valuation of over \$1 billion. For a unicorn, the Journey starts from the growth stage, they are disruptors which start out in an incredibly unique way to solve everybody problem. The reasons these startup become so successful is because all of their solutions fill a specific need in a new and different way.

The Indian startup ecosystem has developed dynamically in recent times. Two decades back, there

were only few active investors and limited number of support organisations, such as incubators and accelerators. However, in the past decade there has been a significant increase in both investment activity and infrastructure facilities to provide the much-needed impetus to the expansion of the unicorn tribe.

The primary distinction between the startup and entrepreneurship is that an entrepreneur refers to all business ventures, new or old. It includes small businesses, partnerships, firms, sole-proprietorship and corporations which can be based on a new idea or on an existing idea. On the other hand, a startup is a newly merged business venture started by individual founders to meet a market gap. Startups mostly mean new businesses that are solving market's problems with unique ideas.

#### **Answer 4A(iii)**

Entrepreneurship And Skill Development Programme (ESDP) Scheme aims at promoting new enterprises, capacity building of existing MSMEs and inculcating entrepreneurial culture in the country.

It is applicable to all the aspiring and existing entrepreneurs.

It facilitates entrepreneurship/ self-employment awareness and motivation to different sections of the society including SC/ ST/ Women, differently abled, Ex-servicemen and BPL persons as career options. Entrepreneurship & Skill Training in Agro Based Products, Hosiery, Food & Fruit Processing Industries, Carpet Weaving, Mechanical Engineering Workshop/ Machine Shop, Heat Treatment, Electroplating, Basic/Advance Welding/ Fabrication/ Sheet metal work, Basic/ Advance Carpentry, Glass & Ceramics etc. is the main target of the scheme.

The scheme make provision for management capacity building Training to existing entrepreneurs and their supervisory staff in Industrial Management, Human Resource Management, Marketing Management, Export Management/Documentation & Procedures, Materials Management, Financial/Working ~Capital Management, Information Technology, Digital Marketing, Quality Management/QMS/ISO 9000/EMS, WTO, IPR, Supply Chain Management, Retail Management, Logistics Management etc. The scheme widens the base of entrepreneurship by development, achievement, motivation and entrepreneurial skill to the different sections of the society.

Thus, ESDP scheme aims at promoting new enterprises, capacity building of existing MSMEs and inculcating entrepreneurial culture in the country.

#### **Answer 4A(iv)**

Segregation of laws applicable on the Company into the Industry specific and general is essential for Secretarial Audit. After considering the following factors the auditor should make the segregation of the same based on the laws being applicable on the Company

- Key financial parameters such as turnover, paid-up share capital, net worth, borrowings, etc.
- Geographic location of registered office, units / divisions / plants / branches, etc.
- Status of company such as listed / unlisted
- Types / class of company such as Private, Public, Holding, Subsidiary,
- Foreign, Nidhi, Producer, Section 8, etc.
- Registration with various authorities such as SEZ, Sectoral Regulators, etc.
- Segment such as manufacturing / trading / service / e-commerce and industry classification thereof.

- Agreements governing rights, obligations of shareholders such as Jointventure, shareholders' agreements
- Number, class and category of employees / workers such as women, contractual employees, etc.

#### **Answer 4A(v)**

Housing Finance Companies (HFCs) in India are governed by a specific set of laws and regulations which are as follows:

1. National Housing Bank Act, 1987;
2. The Housing Finance Companies (NHB) Directions, 2010;
3. Guidelines on Know your Customer and Anti-Money Laundering Measures;
4. Guidelines for Asset Liability Management System in Housing Finance Companies;
5. Housing Finance Companies- Issuance of Non-convertible Debentures on private placement basis (NHB) Directions, 2014;
6. Housing Finance Companies - Corporate Governance (National Housing Bank) Directions, 2016;
7. Housing Finance Companies - Auditor's Report (National Housing Bank) Directions, 2016;
8. Guidelines on Fair Practices Code for Housing Finance Companies;
9. Guidelines on Reporting and Monitoring of Frauds in Housing Finance Companies;
10. Information Technology Framework for HFCs - Guidelines;
11. Pension Fund Regulatory and Development Authority (Point of Presence) Regulations, 2018;
12. Pension Fund Regulatory and Development Authority (Redressal of Subscriber Grievance) Regulations 2015;
13. Master Direction - Non-Banking Financial Company - Housing Finance Company (Reserve Bank Directions, 2021).

## **PART-II**

### **Question 5**

XYZ Manufacturing Pvt. Ltd. is a reputable medium-sized manufacturing company headquartered in Delhi. Established in 2005, the company specializes in the production of electronic components catering to various industries such as telecommunications, automotive, consumer electronics, and industrial automation. With a commitment to quality and innovation, XYZ Manufacturing Pvt. Ltd. has emerged as a trusted supplier in the highly competitive electronics market Infrastructure. The company operates from a state-of-the-art manufacturing facility spanning over 50,000 square feet in Delhi's industrial hub. Equipped with advanced machinery and technology, the facility enables XYZ Manufacturing Pvt. Ltd. to meet the diverse needs of its clients with precision and efficiency. The production lines are organized to optimize workflow and ensure timely delivery of orders.

*Workforce* : XYZ Manufacturing Pvt. Ltd. prides itself on its skilled and dedicated workforce comprising approximately 500 employees. The workforce includes a mix of permanent staff and contract workers, with roles ranging from production technicians and engineers to administrative personnel and managerial staff. The company fosters a culture of inclusivity, professional development, and employee welfare to enhance productivity and job satisfaction. *Labour Practices* :

- (1) *Health and Safety Measures* : XYZ Manufacturing Pvt. Ltd. prioritizes the health and safety of its employees by implementing robust safety protocols and providing necessary protective equipment. Regular safety audits and training programs are conducted to mitigate workplace hazards and promote a culture of safety awareness among workers.
- (2) *Employee Welfare Initiative* : The company recognizes the importance of employee welfare and implements various initiatives to enhance the well-being of its workforce. This includes facilities such as clean restrooms, designated break areas, and access to clean drinking water. Additionally, the company offers health insurance coverage and access to medical facilities for employees and their families.
- (3) *Training and Skill Development* : XYZ Manufacturing Pvt. Ltd. invests in training and skill development programs to empower its employees with the necessary knowledge and skills to excel in their roles. Training sessions on technical skills, quality standards, and soft skills are conducted regularly to enhance employee competence and performance.
- (4) *Labour Relations* : The company maintains open and transparent communication channels with its employees to address any concerns or grievances effectively. Regular meetings, feedback sessions, and employee engagement programs are organized to foster a positive work environment and build strong relations between management and staff.   
*Compliance with Labour Laws* : XYZ Manufacturing Pvt. Ltd. is committed to upholding the highest standards of compliance with labor laws and regulations in India. The company ensures adherence to the provisions of relevant statutes such as the Factories Act, Minimum Wages Act, Provident Fund Act, Employees' State Insurance Act, Payment of Bonus A/c, Industrial Disputes Act, and Contract Labour Act. Legal compliance is overseen by a dedicated compliance team that monitors regulatory updates, conducts audits, and implements necessary measures to ensure full compliance across all aspects of employment.

XYZ Manufacturing Pvt. Ltd. stands as model enterprise in the manufacturing sector, demonstrating a strong commitment to employee welfare, ethical labour practices, and legal compliance. By prioritizing the health, safety, and well-being of its workforce while adhering to labour laws, the company not only ensures its own sustainability and success but also contributes to the overall socio-economic development of the community.

In view the above, answer the following :

- (a) What is the duty of inspector with respect to the Safety of Buildings and Machinery ? Can State Government appoint Safety Officer ? Answer.
- (b) Write down the duties of XYZ Manufacturing Pvt. Ltd. to provide basic and practical training to apprentices under the Apprentices Act, 1961.
- (c) Write down the procedure for fixing and revising minimum wages under the Minimum Wages Act, 1948.
- (d) Write down provisions with respect to Contract Labour (Regulation and Abolition) Act, 1970. What are the penalties in case of contravention of the provisions by the Company ?

(5 marks each)

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

*Duties of the Inspector with respect to the Safety of buildings and machinery are indicated in Section 40 of Factories Act, 1948 which are as follows:*

If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve

on the occupier or manager or both of the factory an order in writing specifying the measures, which in his opinion should be adopted and requiring them to be carried out before a specified date.

If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety he may serve on the occupier or manager or both of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

Appointment of Safety Officers under Section 40B of Factories Act, 1948

If State Government requires, by notification in Official Gazette, the occupier shall employ such number of Safety Officers as may be specified in that notification in every factory

- (i) wherein one thousand or more workers are ordinarily employed, or
- (ii) wherein, in the opinion of the State Government, any manufacturing processor operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease or any other hazard to health, to the person employed in the factory.

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

Section 9 of Apprentices Act, 1961 the deals with practical and basic training of apprentices. Following are the duties of XYZ Manufacturing Pvt Ltd with regards to providing basic and practical training to apprentices:

-Every employer shall make suitable arrangements in his workplace for imparting a course of practical training to every apprentice engaged by him.

-The Central Apprenticeship Adviser or any other person not below the rank of an Assistant Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall be given all reasonable facilities for access to each such apprentice with a view to test his work and to ensure that the practical training is being imparted in accordance with the approved programme: Provided that the State Apprenticeship Adviser or any other person not below the rank of an Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall also be given such facilities in respect of apprentices undergoing training in establishments in relation to which the appropriate Government is the State Government.

Such of the trade apprentices who have not undergone institutional training in a school or other institution recognised by the National Council or any other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority which the Central Government may, by notification in the Official Gazette, specify in this behalf, shall, before admission in the workplace for practical training, undergo a course of basic training and the course of basic training shall be given to the trade apprentices in any institute having adequate facilities.

In the case of an apprentice other than a graduate or technician apprentice or technician (vocational) apprentice, the syllabus of and the equipment to be utilised for, practical training including basic training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.

In the case of graduate or technician apprentices or technician (vocational) apprentices, the programme of apprenticeship training and the facilities required for such training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.

Recurring costs (including the cost of stipends) incurred by an employer in connection with basic training, imparted to trade apprentices other than those referred to in clauses (a) and (aa) of

Section 6 shall be borne:

- (i) If such employer employs two hundred and fifty workers or more, by the employer;
- (ii) If such employer employs less than two hundred and fifty workers, by the employer and the Government in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone;
  - Recurring costs (including the cost of stipends), if any, incurred by an employer in connection with practical training, including basic training, imparted to trade apprentices referred to in clauses (a) and (aa) of Section 6 shall, in every case, be borne by the employer.
  - Recurring costs (excluding the cost of stipends) incurred by an employer in connection with the practical training imparted to graduate or technician apprentice (vocational) shall be borne by the employer and the cost of stipends shall be borne by the Central Government and the employer in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone except apprentices who hold degree or diploma in non-engineering.

In addition to the above XYZ Manufacturing Pvt Ltd to comply with requirement of Section 11 of Apprentices Act, 1961.

### **Answer 5(c)**

Section 5 of the Minimum Wages Act, 1948 deals with procedure for fixing and revising minimum wages.

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow either of the two methods described below.

#### *First Method [Section 5(1)(a)]*

This method is known as the 'Committee Method'. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

Note: It was held in *Edward Mills Co. v. State of Ajmer (1955) A.L.R. SC*, that Committee appointed under Section 5 is only an advisory body and that Government is not bound to accept its recommendations.

#### *Second Method [Section 5(1)(b)]*

The method is known as the 'Notification Method'. When fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification. However, if no date is specified, the notification shall

come into force on expiry of three months from the date of its issue. Minimum wage rates can be revised with retrospective effect. [1996 II LU 267 Kar.]

### **Answer 5(d)**

Contract Labour (Regulation and Abolition) Act, 1970 covers provision regarding registration of establishment employing contract labour, license of contractor, welfare and health of Contract Labour and penalty & procedure, etc.

According to section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment. Section 10 vests overriding power in Appropriate Government irrespective of anything contained in the Act.

Offences by Companies. - Section 25 of the Contract Labour (Regulation and Abolition) Act, 1970 provides for that if the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

It is provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

However, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purpose of this section –

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm means a partner in the firm.

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

#### **Question 6**

- (a) X was facing a departmental enquiry for allegedly indulging in sexual harassment of his senior woman officer. He contended that as the alleged misconduct took place not at the workplace but in the guesthouse of company where the woman officer was residing, he could not be accused of sexual harassment at workplace. In the light of a decided case law, examine the validity of contention of A.

(5 marks)

- (b) Shailja, a female employee working in a multinational company, informed the manager of the company about her pregnancy. She sought guidance on maternity leave entitlements and benefits under the Maternity Benefit Act, 1961. As the manager of the company, advise Shailja on the maternity leave entitlements and benefits available to her under the Maternity Benefit Act, 1961.

(5 marks)

(c) ABC Ltd. is a medium-sized manufacturing company that produces automotive parts. The company has a workforce of 150 employees, including both production line workers and administrative staff. ABC Ltd. typically awards annual bonuses to its employees based on performance and company profits. Upon conducting internal investigations and reviewing surveillance footage, the management discovered evidence of theft by a few employees at the stores. Citing the relevant provisions of Payment of Bonus Act, 1965, examine the eligibility for bonus to those employees involved in theft.

(5 marks)

(d) In 2023, due to a severe economic recession, PR Software Solutions Pvt. Ltd., a mid-sized IT firm in India, decided to lay off a significant portion of its workforce. Among those affected was Y, a project manager who had been with the company for over seven years. Y was given a month's notice before his termination. He believes that his termination was unjust and wants to challenge it under the Industrial Disputes Act, 1947.

- (1) Under the Industrial Disputes Act, 1947, can Y challenge his termination due to the economic recession ?
- (2) What is the role of the government in such disputes under the Industrial Disputes Act, 1947 ?
- (3) What remedies are available to Y if his claim is upheld ?

(5 marks)

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

**Question 6A**

- (i) Define the term 'E.I. Court'. Which types of matters are decided by the E.I. Court ?
- (ii) What is meaning of gig workers and what are some of the potential benefits and challenges that gig workers might face ?
- (iii) What are the provisions with respect to Voluntary Reference of Disputes to Arbitration under the Industrial Disputes Act, 1947 ?
- (iv) "Social Security is guaranteed in our Constitution."

In light of above statement, how does Article 43 of Constitution requires the state to secure living wage ?

(5 marks each)

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

**Answer 6(a)**

In the case of *Saurabh Kumar Mallick v. Comptroller & Auditor General of India, WP (C) No.8649/2007*, the respondent who was facing departmental inquiry for allegedly indulging in sexual harassment of his senior woman officer contended that he could not be accused of sexual harassment at workplace as the alleged misconduct took place not at the workplace but at an official mess where the woman officer was residing. It was also argued that the complainant was even senior to the respondent and therefore no 'favour' could be extracted by the respondent from the complainant and thus the alleged act would not constitute 'sexual harassment'.

The Delhi High Court while considering this matter held this as 'clearly misconceived'. The Delhi High Court observed that the aim and objective of formulating the Vishakha Guidelines was obvious in

order to ensure that sexual harassment of working women is prevented and any person guilty of such an act is dealt with sternly.

Keeping in view the objective behind the judgment, a narrow and pedantic approach cannot be taken in defining the term 'workplace' by confining the meaning to the commonly understood expression "office". It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and advancement of information technology. A person can interact or do business conference with another person while sitting in some other country by way of videoconferencing. It has also become a trend that the office is being run by CEOs from their residence. In a case like this, if such an officer indulges in an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at 'workplace' but at his Residence' and get away with the same. Noting the above, the High Court observed that the following factors would have bearing on determining whether the act has occurred in the 'workplace':

- Proximity from the place of work
- Control of the management over such a place/residence where the working woman is residing
- Such a residence has to be an extension or contiguous part of the working place.

In conclusion, the Delhi High Court held that the official mess where the employee was alleged to have been sexually harassed definitely falls under 'workplace'.

In view of the above provisions and case law, the contention of A is invalid.

### **Answer 6(b)**

Under the Maternity Benefit Act, 1961, maternity leave entitlement and benefits are provided to eligible female employees to ensure their health, well-being, and job security during pregnancy and childbirth. Here are the key provisions regarding maternity leave entitlement and benefits under the Act:

1. *Duration of Maternity Leave:* The Maternity Benefit Act entitles eligible female employees to a minimum of 26 weeks of maternity leave. However, for women who have already had two or more children, the duration of maternity leave is reduced to 12 weeks.
2. *Commencement of Maternity Leave:* Maternity leave can commence up to eight weeks before the expected date of delivery (pre-natal leave). If the woman works in a factory, and her delivery occurs during the pre-natal leave period, the maternity leave will automatically extend for six weeks following the delivery.
3. *Wages During Maternity Leave:* During the period of maternity leave, the woman is entitled to receive maternity benefit, which is payable at the rate of her average daily wage for the period of her absence. The average daily wage is calculated based on the average wage earned- by the woman during the three months immediately preceding the date of her maternity leave.
4. *Medical Bonus:* In addition to maternity benefit, eligible women are entitled to receive a medical bonus if they do not receive free medical care from their employer during pregnancy and childbirth.
5. *Leave for Miscarriage or Medical Termination of Pregnancy:* In case of miscarriage or medical termination of pregnancy, a woman is entitled to six weeks of maternity leave immediately following the day of her miscarriage or termination.
6. *Notice of claim for Maternity Leave:* A woman intending to take maternity leave is required

to give her employer written notice of her pregnancy and her intention to avail maternity leave, at least six weeks before the date of her expected delivery.

7. *Protection Against Dismissal or Discharge:* The Maternity Benefit Act prohibits the dismissal or discharge of a woman during her absence on maternity leave. It also prohibits the employer from changing her conditions of service to her disadvantage during this period.
8. *Nursing breaks:* Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.
9. *Creche Facility:* Every establishment having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities. The employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her.
10. *Employer's Obligations:* Employers are required to display an abstract of the Maternity Benefit Act at the workplace and provide information about maternity benefits to eligible female employees. Employers must also ensure compliance with the provisions of the Act regarding maternity leave, benefits, and protections for female employees.

These provisions of the Maternity Benefit Act aim to support women during pregnancy and childbirth, promote their health and well-being, and ensure their job security and economic independence. It is essential for employers to be aware of and comply with these provisions to protect the rights of female employees.

Thus, Shailja is advised accordingly on the maternity leave entitlement and benefits available to her under Maternity Benefit Act, 1961.

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

Section 9 of Payment of Bonus Act, 1965 deals with Disqualification for Bonus

According to Section 9 of the act an employee shall be disqualified from receiving bonus under the Payment of Bonus Act, 1965, if he is dismissed from service for:

- Fraud, or
- Riotous or violent behavior while on the premises of the establishment; or
- Theft, misappropriation or sabotage of any property of the establishment

This provision is based on the recommendation of Bonus Commission, which stated that:

After all, bonus can only be shared by those workers who promote the stability and well-being of the industry, not by those who positively exhibit disruptive tendencies. Bonuses, without a doubt, impose a duty of good behaviour.

In *Gammon India Ltd Vs Niranjana Das*, the Court held that an employee who is dismissed from service for fraud, riotous or aggressive behaviour on the premises of the company, or who is guilty of theft, misappropriation, or sabotage of any establishment's property is disqualified from receiving bonus for the accounting year under section 9 of the Payment of Bonus Act, 1965. A dismissed employee who has been reinstated with back pay has evidently not committed the above crimes and has not been fired. As a result, he is entitled to a bonus.

In view of the above, those employees of ABC Limited, who are guilty of theft are not entitled to payment of bonus.

**Answer 6(d)**

1. As per the provisions of the Industrial Disputes Act, 1947 even in the case of an economic recession, the company must follow due process for layoffs as per the Act. If Mr. Y believes that the company did not follow the proper procedure or that his termination was discriminatory, he can challenge it.
2. The government plays a crucial role in such disputes. If the dispute cannot be resolved at the company level, it can be referred to the appropriate government authority. The government can then refer the dispute to a conciliation officer, Board, Labour Court, or Tribunal as per the Act. The Government also ensures that the rights of the workers are protected during this process.

The adjudication of industrial disputes by Conciliation Board, Labour Court, Court of Inquiry, Industrial Tribunal or National Tribunal can take place when a reference to this effect has been made by the appropriate Government under Section 10 of Industrial Disputes Act, 1947.

3. If Y's claim is upheld, the remedies available to him can include reinstatement to his previous position or compensation. The exact remedy would depend on the specifics of the case and the decision of the Labour court or tribunal. The decision of the Labour court or Tribunal is binding on both Mr. Y and the company.

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

**Answer 6A(i)**

Section 74 of Employees' State Insurance Act, 1948 provides that the State Government shall by notification in the Official Gazette constitute an Employees' Insurance Court (E.I) for such local area as may be specified in the notification. The Court shall consist of such number of judges as the State Government may think fit. Any person who is or has been judicial officer or is a legal practitioner of 5 years standing shall be qualified to be a judge of E.I Court. The State Government may appoint the same Court for two or more local areas or more Courts for the same local area and may regulate the distribution of business between them.

*Matters to be decided by E.I. Court*

According to Section 75 of Employees' State Insurance Act, 1948, following matters to be decided by the E.I Court:

- (1) If any question or dispute arises as to-
  - (a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or
  - (b) the rate of wages or average daily wages of an employee for the purposes of this Act, or
  - (c) the rate of contribution payable by a principal employer in respect of any employee, or
  - (d) the person who is or was the principal employer in respect of any employee, or
  - (e) the right of any person to any benefit and as to the amount and duration thereof, or
  - (ee) any direction issued by the Corporation under section 55A on a review of any payment of dependant's benefits, or
  - (g) any other matter which is in dispute between a principal employer and the Corporation,

or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer in respect of any contribution or benefit or other dues payable or recoverable under this Act or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act such question or dispute subject to the provisions of sub-section (2A) shall be decided by the Employees' Insurance Court in accordance with the provisions of ESI Act.

- (2) Subject to the provisions of sub-section (2A), the following claims shall be decided by the Employees' Insurance Court, namely: --
- (a) claim for the recovery of contributions from the principal employer;
  - (b) claim by a principal employer to recover contributions from any immediate employer;
  - (d) claim against a principal employer under section 68;
  - (e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and
  - (f) any claim for the recovery of any benefit admissible under ESI Act.

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

The Code on Social Security, 2020 under section 2 (35) defines gig worker" as a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship.

Gig worker is an individual who engages in short-term, flexible jobs, typically as a freelancer, consultant, or independent contractor. Unlike traditional employees bound to a single employer, gig workers operate in the gig economy, taking on various projects from different clients, often facilitated through online platforms.

They are often self-employed, meaning they manage their own schedules and workload without being tied to a single employer. They usually don't receive standard employment benefits but may have access to alternative options. Gig workers, or independent contractors, enjoy several benefits but also face unique challenges.

#### *Benefits:*

1. *Flexibility:* Gig workers often have the freedom to choose when and where they work, providing a level of flexibility not typically found in traditional employment.
2. *Variety:* They have the opportunity to work on a variety of projects, which can lead to a diverse portfolio and a broad range of experience.
3. *Independence:* Gig workers have more control over their work, allowing them to align their tasks with their personal interests and skills.
4. *Cost-Effectiveness:* Gig workers often work remotely, which can save costs associated with commuting and maintaining a professional wardrobe.

#### *Challenges:*

1. *Income Instability:* Gig work can be unpredictable, leading to periods of feast or famine. This lack of a stable income can make financial planning challenging.
2. *Lack of Benefits:* Unlike traditional employees, gig workers typically do not receive benefits such as health insurance, retirement plans, or paid time off.

3. *Isolation*: Gig workers often work alone, which can lead to feelings of isolation or disconnection from a work community.
4. *Job Security*: Gig workers may face uncertainty regarding job security as they are often hired on a project-to-project basis.

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

Section 10A of Industrial Disputes Act, 1947 provides for the settlement by voluntary reference of dispute to arbitration.

To achieve this purpose, Section 10A makes the following provisions:

- (i) Where any industrial dispute exists or is apprehended and the same has not yet been referred for adjudication to a Labour Court, Tribunal or National Tribunal, the employer and the workmen may refer the dispute, by a written agreement, to arbitration specifying the arbitrator or arbitrators. The presiding officer of a Labour Court or Tribunal or National Tribunal can also be named by the parties as arbitrator. Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.
- (ii) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.
- (iii) A copy of the arbitration agreement shall be forwarded to appropriate Government and the Conciliation Officer and the appropriate Government shall within one month from the date of the receipt of such copy, publish the same in the Official Gazette.
- (iv) According to Section 10-A(3A), where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred above, issue a notification in such manner as may be prescribed; and when any such notification is issued, the employer and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.
- (v) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all arbitrators, as the case may be.
- (vi) Where an industrial dispute has been referred to arbitration and a notification has been issued, the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.
- (vii) Nothing in the Arbitration Act, 1940 shall apply to arbitrations under this Section.

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

Article 43 of the Indian Constitution requires the state to endeavour to secure, by suitable legislation, or economic organisation, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities. In particular, the state is to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43 imposes an obligation towards ensuring the provision of a living wage' in all sectors as well as acceptable conditions of work. This provision enunciates the revolutionary doctrine that employees are entitled as of right to certain reliefs.

A living wage' is such wage as enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but includes education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age. A 'minimum wage', on the other hand, is just sufficient to cover the bare physical needs of a worker and his family. Minimum wage is to be fixed in an industry irrespective of its capacity to pay. Fixation of minimum wage is in public interest and does not impose an unreasonable restriction on the right to carry on a trade guaranteed by Article 19(1)(g). (*Edward Mills Co. v. Ajmer*, AIR 1955 SC 25).

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# CORPORATE ACCOUNTING & FINANCIAL MANAGEMENT

## GROUP 1 PAPER 4

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART A

#### Question 1

Prabhujji is a first-generation entrepreneur engaged in the bakery business. Prabhujji is the proprietor of B & Sons – a Mumbai based concern manufacturing bakery products, confectioneries and sweets. The products are manufactured and sold in wholesale to retailers under a brand name ‘‘Bread & More’’. Products were essentially sold to retailers who would then sell the final customer. Since the year 2020 – the next generation of Prabhujji’s family started participating in the business. The new generation is technologically aware and suggested direct sales to customers through omni channel (online sales). The bakery brand was only known locally. However, due to sales online and due to the good quality of the products – the bakery product’s started gaining traction nationally. Demand for the products increased. As a result, there was a need to increase manufacturing capacity. The new members in the business suggested borrowing or setting up a Special Purpose Vehicle for the new manufacturing unit. Private Equity players can then invest in the Special Purpose Vehicle. Prabhujji is a conservative businessman. While not being average to expansion – Prabhujji suggests minimizing the need for external finance while relying more on internal accruals.

Following are some financial details :

Particulars	Amount (₹)
Inventory at 1st April 2022	1,00,000
Inventory at 31st March, 2023	2,00,000
Revenues	25,00,000
Credit Sales	80% of sales
Purchases	9,50,000
Wages	7,00,000
Carriage inwards	1,50,000
Receivables 1st April, 2022	2,50,000
Receivables 31st March, 2023	3,00,000
Total assets	24,00,000
Admin. Expenses	2,50,000

Depreciation	2,00,000
Finance charges	50,000
Total debt	4,00,000
Total equity	20,00,000
Tax	30%

Jimsha is a financial expert and consultant and is a school friend of Prabhujji. One of the key questions was on improvement in cash flows. Jimsha made a suggestion regarding study of working capital management. A number of firms ignore funds blocked in working capital. Prabhujji was also concerned about the return on funds invested in business as capital. Jimsha advised Prabhujji to use Du Pont Analysis to check whether funds are used efficiently.

Prabhujji mentions the increase in demand and possible need to increase capacity. There are various options available to meet the demand.

- Outsource the production to third party.
- Expand the production capacity by incurring certain capital expenditure.

There are concerns around manufacturing quality if production is outsourced. The cost of the additional capacity is likely to be substantial. A capex of ₹ 5,00,000 financed 80% by debt raised at 10% and remaining through new equity is required. Financial projections are given below :

Information for 2023-24	Current	New
Revenues	25,00,000	Increase by 30%
Total assets	24,00,000	26,00,000
Admin. Expenses	2,50,000	2,75,000
Depreciation	2,00,000	3,00,000
Financial charges	50,000	50,000 + Interest on new debt
Total equity	20,00,000	New Equity amount
Total debt	4,00,000	
Tax	30%	30%

Gross profit ratio remains same as previous year.

On the basis of above information, answer the following questions :

- Calculate inventory turnover, average collection period and interpret the ratios.
- Calculate Return on Equity by using Du Pont Analysis. Comment on how can Return on Equity be improved.
- Prepare the estimate of Profit & Loss A/c for 2023-24. What will be the Owner's capital as on 31st March, 2024 ?

(5 marks each)

**Answer 1(a)**

$$\text{Inventory Turnover Ratio} = \frac{\text{Cost of Goods Sold}}{\text{Average Inventory}}$$

Cost of Goods Sold = Opening Inventory + Purchases+ Wages+ Carriage Inwards – Closing Inventory

$$\begin{aligned} \text{Cost of Goods Sold} &= ₹ 1,00,000 + ₹ 9,50,000 + ₹ 7,00,000 + ₹ 1,50,000 - ₹ 2,00,000 \\ &= ₹ 17,00,000 \end{aligned}$$

Average Inventory = (Opening Inventory + Closing Inventory)/2

$$\text{Inventory Turnover Ratio} = \frac{\text{Cost of Goods Sold}}{\text{Average Inventory}} = \frac{₹ 17,00,000}{₹ 1,50,000} = 11.33 \text{ times}$$

$$\text{Receivables Turnover Ratio} = \frac{\text{Credits Sales}}{\text{Receivables Turnover}} = \frac{(80\% \text{ of } ₹ 25,00,000)}{(₹ 2,50,000 + ₹ 3,00,000)/2}$$

$$\text{Receivables Turnover Ratio} = \frac{₹ 20,00,000}{₹ 2,75,000} = 7.273 \text{ times}$$

$$\text{Average Collection Period} = \frac{365}{\text{Receivables Turnover}} = \frac{365}{7.273} = 50.19 \text{ days}$$

<b>Interpretation of Ratios</b>	
Inventory turnover ratio of 11.33 times	Inventory turnover ratio of 11.33 has room for improvement. Inventory days (365/11.33) are 32 days. The organization should aim to reduce inventory days with better planning of raw material utilization and demand estimation of finished products.
Average Collection Period is 50.19 days	It takes approximately 50 days to collect on credit sales. Receivable days are on the higher side. Planning should be done to improve upon collection. Factoring as a strategy could also be used to sell receivables.

**Answer 1(b)**

Return on Equity = Net Profit Margin x Asset Turnover Ratio x Financial Leverage

$$\begin{aligned} \text{(i) Net Profit Margin} &= \frac{\text{Net Profit}}{\text{Revenues}} \\ &= \frac{(\text{Sales} - \text{Cost of Goods Sold} - \text{operating expenses}) - 30\% \text{ tax}}{\text{Revenues}} \end{aligned}$$

$$= \frac{(\text{₹ } 25,00,000 - \text{₹ } 17,00,000 - \text{₹ } 2,50,000 - \text{₹ } 2,00,000 - \text{₹ } 50,000) - 30\% \text{ tax}}{\text{₹ } 25,00,000}$$

$$= \text{₹ } 2,10,000 / \text{₹ } 25,00,000 = 8.40\% \text{ (A)}$$

$$\text{(ii) Net Profit Margin} = \frac{\text{Sales}}{\text{Total Assets}} = \frac{\text{₹ } 25,00,000}{\text{₹ } 24,00,000} = 1.042 \text{ (B)}$$

$$\text{(iii) Financial Leverage} = \frac{\text{Total Assets}}{\text{Total Equity}} = \frac{\text{₹ } 24,00,000}{\text{₹ } 20,00,000} = 1.20 \text{ (C)}$$

$$\text{Return on Equity} = \text{(A)} \times \text{(B)} \times \text{(C)} = 8.40 \times 1.04 \times 1.20 = 10.50\%$$

The return on equity is calculated using Du Pont Analysis. An improvement can be made in RoE:

- By improving the utilization of assets. The asset turnover ratio is on the lower side. Operations need to be studied for efficiency. An increase in Assets turnover will improve expected returns on equity.
- A small amount of debt increase on the balance sheet could help the firm. Increase in financial leverage is likely to lead to an increase in Return on Equity. However, it should be noted that borrowing costs need to be lower than expected Return on Capital Employed to benefit equity shareholder returns.
- Passing on some of the costs to customers through minor price increases and making the organization more efficient may lead to better margins and in turn better Return on equity.

### Answer 1(c)

#### Estimated Profit & Loss A/c for financial year 2023-24 for "B & Sons"

Estimated P&L	Amount in ₹ FY 2022-23	Amount in ₹ FY 2023-24	Comments
Revenues	25,00,000	32,50,000	New Revenues increase by 30%
<b>Gross Profit</b>	<b>8,00,000</b>	<b>10,40,000</b>	Gross Profit Margin 32%
Admin expenses	2,50,000	2,75,000	Given
Depreciation	2,00,000	3,00,000	Given
<b>Earnings before Interest and Tax (EBIT)</b>	<b>3,50,000</b>	<b>4,65,000</b>	
Finance Charges	50,000	90,000	Additional Debt is 4,00,000/- @10 % interest
<b>Earnings before Tax (EBT)</b>	<b>3,00,000</b>	<b>3,75,000</b>	
Tax	90,000	1,12,500	Tax rate @30%
<b>Profit after Tax (PAT)</b>	<b>2,10,000</b>	<b>2,62,500</b>	

**Owner's Capital as on March 31, 2024**

Particulars	Amount in ₹
Equity Amount as on 1st April 2023	20,00,000
Profit of FY 2023-24	2,62,500
Additional Equity raised (₹ 5,00,000 - 80% debt)	1,00,000
	<b>23,62,500</b>

**Question 2**

(a) Following information is provided for X Ltd :

**Balance Sheet of X Ltd.  
(As on 31st March, 2023)**

I. Equity and Liability	Amount (₹ in lakh)	Amount (₹ in lakh)
1. Shareholders' Funds		
(a) Share Capital		
Equity Capital		
Divided in shares of face value 10/- Preference Capital	XX	
Divided in shares of face value 1,000/-	XX	XX
(b) Reserves and Surplus		
General Reserve	7,800	
P & L A/c	15,000	22,800
2. Non-Current Liabilities		
(a) Long-term Borrowings		XX
3. Current Liabilities		
Short-term Borrowings	5,000	
Trade Payables	3,000	
Short-term Provisions	500	
Outstanding Expenses	100	8,600
<b>II. Assets</b>		
1. Non-Current Assets		
(a) Property, Plant and Equipment and Intangible Assets		

(i) Property, Plant and Equipment	30,000	
(ii) Intangible Assets	1,000	
(iii) Capital Work in Progress	2,500	33,500
2. Non-Current Assets		XX
3. Current Assets		
(a) Inventories	XX	
(b) Trade Receivables	5,000	
(c) Cash and Cash Equivalent	300	XX

Complete the above balance sheet. Other relevant information is given below :

- The investments are in fixed income securities and have an interest rate of 8%. The payout of interest is ₹ 100 lakh. (ignore tax or TDS).
- Inventory turnover ratio is 5. The Cost of Goods sold is ₹ 15,000 lakh.  
Opening and Closing inventory figures are same.
- Issued equity share capital of ₹ 10 each is twice of preference share capital.
- Long-term borrowings have an interest payout of ₹ 1,000 lakh and rate of interest is 10%.

(7 marks)

(b) Calculate net profit margin from the following given information :

Particulars	Amount (₹)
Revenue from operations	17,00,000
Cost of Revenue from operations	10,00,000
Selling Expenses	2,00,000
Administrative Expenses	1,00,000
Depreciation	2,00,000
Interest expenses	50,000
Other Income	45,000
Tax Rate	30%

(3 marks)

(c) M2 Ltd. is a company and has an ESOP programme, for the following ESOP related exercise :

Date	
1st April 2018	10,000 options were granted at ₹ 400 each when market price was ₹ 1,000. Vesting period was three years Maximum exercise period was one year
31st March, 2021	2,000 unvested options lapsed
31st March, 2021	7,000 options were exercised
31st March, 2022	1,000 options lapsed.

Assume face value of share is ₹ 10. Company follows April-March year end. You are required to pass necessary journal entries.

(5 marks)

### Answer 2(a)

(i) **Calculation of Non-Current Investments**

Long term investments = ₹100/8% = ₹ 1250 Lakh

(ii) **Inventory Turnover Ratio** = 
$$\frac{\text{Cost of Goods Sold}}{\text{Average Inventory}}$$

**Inventory** = ₹15,000 lakh/5 = ₹3,000 lakh

Current Assets = ₹ 3,000 lakh + ₹ 5,000 lakh (Given) + ₹300 lakh (Given)  
= ₹ 8,300 Lakh

Balance Sheet Total = Non-Current Assets + Non-Current Investments + Current Assets  
= ₹ 33,500 Lakh + ₹ 1,250 Lakh + ₹ 8,300 Lakh  
= ₹ 43,050 Lakh

(iii) **Shareholders' Funds**

Balance Sheet Total		₹ 43,050 Lakh
Less: Long term borrowings (1000/10%)	₹ 10,000 Lakh	
Less: Current Liabilities	₹ 8,600 Lakh	
Less: Reserves	₹ 22,800 Lakh	₹41,400 Lakh
Shareholders' Funds		<b>₹ 1,650 Lakh</b> Total of equity shares issued and preference shares

(iv) **Division of share capital in 2:1**

Equity Share Capital	₹ 1,100 Lakh
Preference Share Capital	₹ 550 Lakh
	₹ 1,650 Lakh

## (v)

**Balance Sheet of X Ltd.**  
**(As on 31<sup>st</sup> March 2023)**

<b>I. Equity and Liabilities</b>	<b>Amount (in ₹ lakh)</b>	<b>Amount (in ₹ lakh)</b>
1. Shareholders' Funds		
a. Share Capital		
Equity Capital: Divided in shares of face value ₹ 10/-	1,100	
Preference Capital: Divided in shares of face value ₹ 1,000/-	550	
Total issued capital		<b>1,650</b>
b. Reserves and Surplus		
General Reserve	7,800	
P&L A/c	15,000	<b>22,800</b>
Shareholders' funds		24,450
2. Non-Current Liabilities		
a. Long term Borrowings	10,000	<b>10,000</b>
		-
3. Current Liabilities		
Short Term Borrowings	5,000	
Trade Payables	3,000	
Short Term Provisions	500	
Outstanding Expenses	100	<b>8,600</b>
		<b>43,050</b>
<b>II. Assets</b>		
Non-Current Assets		-
a. Property, Plant and Equipment and Intangible Assets		

i. Property, Plant and Equipment	30,000	
ii. Intangible Assets	1,000	
iii. Capital Work in Progress	2,500	33,500
2. Non-Current Investments		1,250
1. Current Assets		
a. Inventories	3,000	
b. Trade Receivables	5,000	
c. Cash and Cash Equivalents	300	<b>8,300</b>
		<b>43,050</b>

**Answer 2(b)**

Particulars	Amount in ₹	
Sales	17,00,000	
Cost of Sales	-10,00,000	
Gross Profit	<b>7,00,000</b>	<b>41.18%</b>
Selling Expenses	-2,00,000	
Admin Expenses	-1,00,000	
EBITDA	<b>4,00,000</b>	<b>23.53%</b>
Depreciation	-2,00,000	
EBIT	2,00,000	
Interest	-50,000	
Other income	45,000	
EBT	<b>1,95,000</b>	
Tax	-58,500	Tax rate 30%
Net Profit	<b>1,36,500</b>	<b>7.82%</b>

$$\text{Net profit Margin} = \frac{\text{Net Profit}}{\text{Total Revenue}} = \frac{\text{₹ 1,36,500}}{\text{₹ 17,45,000}} = 7.82\%$$

**Note: Total Revenue and Net Profit includes Other Income.**

**Answer 2(c)**

<b>Date</b>	<b>Particulars</b>	<b>Amount (in ₹)</b>	<b>Amount (in ₹)</b>
1 <sup>st</sup> April 2018	Deferred Employee Compensation Expense A/c Dr. To Employee Stock Options Outstanding A/c <b>[Being grant of 10,000 stock options at a discount of ₹ 600 (1,000 - 400)]</b>	60,00,000	60,00,000
31 <sup>st</sup> March 2019	Employee Compensation Expense A/c Dr. To Deferred Employee Compensation Expense A/c <b>(Being amortization of Deferred Compensation i.e. ₹ 60,00,000/3)</b>	20,00,000	20,00,000
31 <sup>st</sup> March 2020	Employee Compensation Expense A/c Dr. To Deferred Employee Compensation Expense A/c <b>(Being amortization of Deferred Compensation i.e. ₹ 60,00,000/3)</b>	20,00,000	20,00,000
31 <sup>st</sup> March 2021	Employee Stock Options Outstanding A/c Dr. To Employee Compensation Expense A/c (2,000*₹600)*2/3 To Deferred Employee Compensation Expense A/c <b>(Being reversal of 2,000 unvested options lapsed)</b>	12,00,000	8,00,000 4,00,000
31 <sup>st</sup> March 2021	Employee Compensation Expense A/c Dr. To Deferred Employee Compensation Expense A/c <b>(Being amortization of Deferred Compensation i.e 8000* ₹ 600/3)</b>	16,00,000	16,00,000
31 <sup>st</sup> March 2021	Bank A/c (7,000*400) Dr. Employee Stock Options Outstanding A/c Dr. To Share Capital A/c To Securities Premium A/c <b>(Being exercise of 7,000 options at an exercise price of ₹ 400/-)</b>	28,00,000 42,00,000	70,000 69,30,000
31 <sup>st</sup> March 2022	Employee Stock Options Outstanding A/c Dr. To Employee Compensation Expense A/c <b>(Being reversal of lapse of vested options - 1,000* ₹ 600)</b>	6,00,000	6,00,000

**Question 3**

(a) New Ltd. issued 1,00,000 shares which were underwritten as under :

	Number of shares underwritten	Applications for firm underwriting	Marked applications
Underwriter A	60,000	8,000	10,000
Underwriter B	25,000	3,000	20,000
Underwriter C	15,000	10,000	5,000

Total subscriptions excluding firm underwriting (including market applications) were 50,000 shares. Prepare a statement calculating net underwriter liability. Consider firm underwriting shares are treated as unmarked applications.

(5 marks)

(b) The summarized balance sheet of H Ltd. and S Ltd. as on 31 March, 2023 are given below :

Equity and Liabilities	H Ltd. (₹)	S Ltd. (₹)
Share Capital :		
Shares of Rs. 10 each	1,00,00,000	20,00,000
Reserves	16,00,000	6,00,000
Profit & Loss A/c	12,00,000	8,00,000
<b>Total</b>	<b>1,28,00,000</b>	<b>34,00,000</b>
Assets		
Sundry Assets	1,00,00,000	34,00,000
Equity in S Ltd. 1,60,000 shares	28,00,000	
	<b>1,28,00,000</b>	<b>34,00,000</b>

S Ltd. had reserves of ₹ 6,00,000 when H Ltd. acquired shares in S Ltd. but P & L balance was fully earned after the purchase of shares by H Ltd.

S Ltd. decided to issue bonus shares out of the post-acquisition profits in the ratio of 1 share for every 5 shares held.

- Calculate cost of control before issue of bonus shares and after issue of bonus shares.
- What will be the journal entry passed in the books of S Ltd. and H Ltd. on issue of bonus shares by S Ltd. ?

(5 marks)

(c) The summarized information of CBA Limited is given below :

**Balance Sheet of CBA Ltd. on 1st April 2022 to 31st March, 2023**

		Amount (in ₹)	
	Particulars	1st April 2022	31st March, 2023
<b>I.</b>	<b>Equities and Liabilities</b>		
	Equity Share Capital	9,00,000	10,50,000
	Share Premium	—	90,000
	General Reserve	1,35,000	1,95,000
	Profit and Loss Account	90,000	2,42,400
	10% debentures	—	2,10,000
	Sundry Creditors	2,55,000	2,72,100
	Provision for Taxation	67,500	1,21,500
	Proposed Dividend	90,000	1,05,000
	<b>Total</b>	<b>15,37,500</b>	<b>22,86,000</b>
<b>II.</b>	<b>Assets</b>		
	Land and Building	6,90,000	11,70,000
	Plant and Machinery	2,56,200	4,20,000
	Furniture	16,500	19,500
	Stock	2,47,200	2,87,100
	Sundry Debtors	2,25,000	2,56,500
	Bank	1,02,600	1,32,900
		<b>15,37,500</b>	<b>22,86,000</b>

Depreciation during the year :	Amount (in ₹)
Land and Building	1,80,000
Plant and Machinery	1,50,000
Furniture	3,600

Debentures were issued on 1st October, 2022.

Prepare Cash Flow Statement of CBA Limited for the financial year ended 31st March, 2023.

(5 marks)

**Answer 3(a)****Calculation of unmarked applications**

	<b>Shares</b>
Total Subscriptions	50,000
Less: Marked Applications	35,000
	15,000
Firm Underwriting	21,000
	<b>36,000</b>

**Statement of Underwriters Liability**

<b>Particulars</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>Total</b>
Gross Liability	60,000	25,000	15,000	1,00,000
Less: Marked Applications	10,000	20,000	5,000	35,000
Balance	50,000	5,000	10,000	65,000
Less: Unmarked applications (Distributed in ratio of gross liability)	21,600	9,000	5,400	36,000
Balance	28,400	-4,000	4,600	29,000
Credit of B's Subscription in 60:15 ratio	-3200	4000	-800	-
<b>Net Liability</b>	<b>25,200</b>	<b>-</b>	<b>3,800</b>	<b>29,000</b>
Add: Firm Underwriting	8,000	3,000	10,000	21,000
<b>Total Liability</b>	<b>33,200</b>	<b>3,000</b>	<b>13,800</b>	<b>50,000</b>

**Answer 3(b)**

<b>Step</b>	<b>Calculation of cost of control before issue of bonus shares</b>	<b>Amount ₹</b>
1	Amount of consideration paid by H Ltd. for acquisition of shares in S Ltd.	28,00,000
2	Less: Face Value of shares acquired	16,00,000
3	Less: H Ltd.'s share in capital profits 600,000 x (8/10)	4,80,000
4	Cost of control/Goodwill	<b>7,20,000</b>

<b>Step</b>	<b>Calculation of cost of control after issue of bonus shares</b>	<b>Amount ₹</b>
1.	Amount of consideration paid by H Ltd. for acquisition of shares in S Ltd.	28,00,000

2.	Less: Face Value of Shares acquired	16,00,000
3.	Less: H Ltd.'s share in capital profits 6,00,000 x (8/10)	4,80,000
		<b>7,20,000</b>
4.	H Ltd.'s share in bonus (20,00,000 x 8/10 x 1/5)	3,20,000
5.	Cost of Control/Goodwill	<b>4,00,000</b>

#### Journal Entries

		Amount in ₹
Books of S Ltd.	P & L A/c Dr.	4,00,000
	To Equity Share Capital A/c	4,00,000
	<i>(Being issue of bonus shares in the ratio of 1 share for every 5 shares held)</i>	
Books of H Ltd.	No entry is passed	

#### Answer 3(c)

Land and Building Account			
Particulars	in ₹	Particulars	in ₹
To balance b/d	6,90,000	By depreciation	1,80,000
To Purchase (Bank)	6,60,000	By balance c/d	11,70,000
	13,50,000		13,50,000
Plant and Machinery Account			
Particulars	in ₹	Particulars	in ₹
To balance b/d	2,56,200	By depreciation	1,50,000
To Purchase (Bank)	3,13,800	By balance c/d	4,20,000
	5,70,000		5,70,000
Furniture Account			
Particulars	in ₹	Particulars	in ₹
To balance b/d	16,500	By depreciation	3,600

To Purchase (Bank)	6,600	By balance c/d	19,500
	23,100		23,100
<b>Provision for Taxation Account</b>			
<b>Particulars</b>	<b>in ₹</b>	<b>Particulars</b>	<b>in ₹</b>
To Bank	67,500	By balance b/d	67,500
To balance c/f	1,21,500	By P & L	1,21,500
	1,89,000		1,89,000

**Cash Flow Statement of CBA Limited for the year ended 31<sup>st</sup> March 2023**

	Particulars	in ₹	in ₹	in ₹
<b>(i)</b>	<b>Cash Flow from Operating Activities</b>			
<b>Add</b>	Profit for the year (P&L difference)		<b>1,52,400</b>	
	Depreciation			
	Land and Building	1,80,000		
	Plant and Machinery	1,50,000		
	Furniture	3,600	<b>3,33,600</b>	
	General Reserve		<b>60,000</b>	
	Interest on Debentures (for 6 months)		<b>10,500</b>	
	Provision for Tax		<b>1,21,500</b>	
	Proposed Dividend		<b>1,05,000</b>	
	Cash flow before working capital changes		<b>7,83,000</b>	
	Working capital changes			
	Stock	-39,900		
	Sundry Debtors	-31,500		
	Sundry creditors	17,100	<b>-54,300</b>	
			<b>7,28,700</b>	
	Tax Paid		<b>-67,500</b>	
	Cash Flow from Operating Activities (A)		<b>6,61,200</b>	<b>6,61,200</b>

<b>(ii)</b>	<b>Cash Flow from Investing Activities</b>			
	Purchase of Land and Building		<b>6,60,000</b>	
	Purchase of Plant and Machinery		<b>3,13,800</b>	
	Purchase of Furniture		<b>6,600</b>	
	Cash Flow from Investing Activities (B)		<b>9,80,400</b>	<b>-9,80,400</b>
<b>(iii)</b>	<b>Cash Flow from Financing Activities</b>			
	Interest on debentures		<b>-10,500</b>	
	Issue of equity shares		<b>1,50,000</b>	
	Share premium		<b>90,000</b>	
	Debenture issue		<b>2,10,000</b>	
	Payment of dividend		<b>-90,000</b>	
		Cash Flow from Financing Activities I		<b>3,49,500</b>
	Net change in cash and cash equivalents (A+B+C)			<b>30,300</b>
	+ Cash and cash equivalents at the beginning			<b>1,02,600</b>
	= Cash and cash equivalents at the end			<b>1,32,900</b>

**Note: It is assumed that the amount of Provision for Taxation and Proposed Dividend as on 1<sup>st</sup> April 2022 i.e base year is paid in current year.**

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

#### Question 4

- (a) Rainbow Ltd. has issued 10,000, 12% redeemable preference shares (Face value ₹ 1,000 each).

The shares are to be redeemed at a premium of 20%. The redemption proceeds will be raised through issue of equity share capital. Number of equity shares to be issued are 50,000 shares of 10 each at ₹ 240 a share.

The whole amount is received and paid out towards redemption of preference share capital.

Pass the necessary journal entries.

(5 marks)

- (b) An unlisted company – other than AIFI, Bank, NBFC and HFC – has debentures on its balance sheet as on 31st March, 2022. Balances are as follows :

Particulars	Amount (₹)
10% mortgage debentures of ₹ 10 each Number 25,00,000	2,50,00,000

Debenture Redemption Reserve (DRR)	1,25,00,000
Unencumbered Investments in Fixed deposits of Scheduled Commercial Banks (Interest @ 7%)	37,50,000
Bank Balance	3,25,00,000

The interest on debentures is paid until 31st March, 2022.

The debentures were repaid on 30th June, 2022 at 10% premium. The investments were realized at par.

Prepare the following ledgers :

- Debenture Account, Debenture Interest Account and Debentures Redemption Reserve Investment Account.
- Debenture Redemption Reserve Account.
- Extract of bank account relating to above transactions.

(5 marks)

- (c) Zedux Ltd. decided to issue 60,000 shares of ₹ 10 each at a premium of ₹ 2 per share. The amount on shares was payable as follows :

On application	₹ 2.00
On allotment	₹ 5.00 (Including premium)
First Call	₹ 2.00
Final Call	₹ 3.00

Applications were received for 1,00,000 shares. Shares were allotted on a pro rata basis. Walter was allotted 1,000 shares. Walter did not pay the allotment money and subsequent calls. Walter's shares were forfeited.

Pass the necessary journal entries.

(5 marks)

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

**Question 4A**

- (i) Define Small and Medium Companies. Describe applicability of Accounting Standards to Small and Medium Companies.
- (ii) Define Leverage. What is "Trading on Equity" ?
- (iii) Mention the records of Accounts to be maintained by a Company. Can a Company maintain accounts in electronic form ?

(5 marks each)

**Attempt all parts of either Q. No. 4 or Q No. 4A****Answer 4(a)**

Particulars		Dr. (in ₹)	Cr. (in ₹)
Bank A/c To Equity Share Application and Allotment A/c <b>(Being application of 50,000 equity shares at ₹ 240 a share including premium of ₹ 230 per share)</b>	Dr.	1,20,00,000	1,20,00,000
Equity Share Application and Allotment A/c To Equity Share Application A/c To Securities Premium Reserves A/c <b>(Being allotment of 50,000 equity shares of ₹10 each issued at a premium of ₹ 230 per share)</b>	Dr.	1,20,00,000	5,00,000 1,15,00,000
12% redeemable preference share capital A/c Premium on redemption of preference share capital A/c To 12% Preference Shareholders A/c <b>(Being amount due on redemption of preference shares)</b>	Dr. Dr.	1,00,00,000 20,00,000	1,20,00,000
Securities Premium Reserves A/c To Premium on redemption of preference share capital A/c <b>(Being application of securities premium account to write off premium on redemption of preference shares)</b>	Dr.	20,00,000	20,00,000
12% Preference Shareholders A/c To Bank A/c <b>(Being amount paid to 12% preference shareholders)</b>	Dr.	1,20,00,000	1,20,00,000

**Answer 4(b)**

10% Mortgage Debentures Account					
Date	Particulars	Amount (₹)	Date	Particulars	Amount (₹)
30th June 2022	To Debenture Holders A/c	2,50,00,000	1st April 2022	By balance b/d	2,50,00,000

<b>Debentures Redemption Reserve (DRR) Investment Account</b>					
<b>Date</b>	<b>Particulars</b>	<b>Amount (₹)</b>	<b>Date</b>	<b>Particulars</b>	<b>Amount (₹)</b>
1st April 2022	To balance b/d	37,50,000	30th June 2022	By Bank	37,50,000
<b>Debenture Interest Account</b>					
<b>Date</b>	<b>Particulars</b>	<b>Amount (₹)</b>	<b>Date</b>	<b>Particulars</b>	<b>Amount (₹)</b>
30th June 2022	To Debenture holder A/c  (2,50,00,000 x 10% x 3/12)	6,25,000	30th June 2022	By Profit and Loss A/c	6,25,000
<b>Debentures Redemption Reserve (DRR) Account</b>					
<b>Date</b>	<b>Particulars</b>	<b>Amount (₹)</b>	<b>Date</b>	<b>Particulars</b>	<b>Amount (₹)</b>
30th June 2022	To General Reserve	2,50,00,000	1st April 2022	By Balance b/d	1,25,00,000
			1st April 2022	By Profit and Loss A/c	1,25,00,000
<b>Bank A/c</b>					
<b>Date</b>	<b>Particulars</b>	<b>Amount (₹)</b>	<b>Date</b>	<b>Particulars</b>	<b>Amount (₹)</b>
1st April 2022	To Balance b/d	3,25,00,000	30th June 2022	By Debenture Holders A/c	2,81,25,000
30th June 2022	To Interest on DRR Investment A/c (37,50,000 x 7% x 3/12)	65,525			
30th June 2022	To DRR Investment A/c	37,50,000	30th June 2022	By Balance c/f	81,90,625
		3,63,15,625			3,63,15,625

**Answer 4(c)**

Date	Particulars		Dr. (in ₹)	Cr. (in ₹)
1.	Bank A/c To Share Application A/c <b>(Being Share application money received on 1,00,000 shares)</b>	Dr.	2,00,000	2,00,000
2.	Share Application A/c To Share Capital A/c To Share Allotment A/c <b>(Being application money for 60,000 shares transferred to Share Capital A/c on allotment and remaining adjusted towards allotment)</b>	Dr.	2,00,000	1,20,000 80,000
3.	Share Allotment A/c To Share Capital A/c To Share Premium A/c <b>(Being allotment money due including premium)</b>	Dr.	3,00,000	1,80,000 1,20,000
4.	Bank A/c To Share Allotment A/c <b>(Being allotment money received)</b>	Dr.	2,16,333	2,16,333
5.	Share First Call A/c To Share Capital A/c <b>(Being first call amount transfer to share capital a/c)</b>	Dr.	1,20,000	1,20,000 --
6.	Bank A/c To Share First Call A/c <b>(Being first call money received)</b>	Dr.	1,18,000	1,18,000
7	Final Call A/c To Share Capital A/c <b>(Being final call transfer to share capital a/c)</b>	Dr.	1,80,000	1,80,000
8	Bank A/c To Final Call A/c <b>(Being Final Call money received and advance adjusted)</b>	Dr.	1,77,000	1,77,000

9	Share Capital A/c	Dr.	10,000	
	Share premium A/c	Dr.	2,000	3,333*
	To Share Forfeited A/c			3,667*
	To Share Allotment A/c			2,000
	To First Call A/c			3,000
	To Final Call A/c			
	<b>(Being Forfeiture of 1,000 shares For non-payment of allotment and call money)</b>			

(\*Since Fractional shares cannot be applied/allotted, the amount in Share Forfeiture A/c and Share Allotment A/c may vary by ± 1)

Workings:

Note 1

		Share Capital	Share Allotment	Share Premium	
Share Application	1,00,000 x 2 = ₹ 2,00,000				
Share Allotment	60,000 x 5 = ₹ 3,00,000	60,000 x 2 = ₹ 1,20,000	2,00,000- 1,20,000= ₹ 80,000		
Allotment money to be received		60,000 x 3 = ₹ 1,80,000		60,000 x 2 = ₹ 1,20,000	
Allotment money received					2,16,333 (Note 2)
First Call money to be received	60,000 x 2 = ₹1,20,000				
First Call money received					₹ 1,18,000
Final Call money to be received	60,000 x 3 = ₹ 1,80,000				
Final Call money received					₹ 1,77,000

Note-2

**Allotment Money Received**

Share allotment money received	In ₹
Shares allotted	60,000
Allotment call	5
Allotment amount	3,00,000

Allotment advance	80,000
Net allotment	2,20,000
Due from Walter on allotment call	-5,000
Excess Walter	1,333
Net amount received	<b>2,16,333</b>

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

#### Answer 4A(i)

Small and Medium Companies ("SMC") are companies that satisfy the following conditions:

- Equity and debt securities of the company are not listed or not in the process of listing on any stock exchange whether in India or outside India
- Company is not a Bank or Financial Institution or Insurance Company
- Company's turnover (excluding other income) does not exceed ₹250 crore in the immediately preceding accounting year
- Company does not have borrowing (including public deposits) exceeding ₹ 50 crore at any time during immediately preceding accounting year
- Company is not a holding company or subsidiary of a non-SMC

#### Applicability of Accounting Standards to SMC:

**Partial Exemption:** Certain Relaxations are provided with respect to the following accounting standards:

- AS 17 Segment Reporting
- AS 15 Employee Benefits
- AS 19 Leases
- AS 20 Earnings Per Share
- AS 29 Provisions, Contingent Liabilities and Contingent Assets

**Full exemption:** AS 3- Cash Flow statements shall not be applicable to SMCs if it is a One Person Company, dormant company and Small Company.

#### Answer 4A(ii)

##### Leverage

Leverage is a financial concept that involves using borrowed capital or debt to increase the potential return on an investment. It is the strategy of using various financial instruments or borrowed capital (like debt) to amplify the potential return of an investment. Leverage can also refer to the amount of debt a firm uses to finance assets.

##### Types of Leverage

1. **Operating Leverage:**

This refers to the proportion of fixed costs to variable costs in a company's operations. High operating leverage means that a company has a larger proportion of fixed costs relative to variable costs, which can amplify the effects of changes in sales on operating income.

## 2. **Financial Leverage:**

This refers to the use of debt to acquire additional assets. Financial leverage is the ratio of a company's debt to its equity. High financial leverage means a company is using a significant amount of debt to finance its assets, which can increase the potential return to equity holders but also increases the risk.

## 3. **Combined Leverage:**

This is the total leverage effect of both operating and financial leverage. It reflects the overall risk and return situation of the company by considering both the fixed costs in operations and the fixed interest obligations from debt.

### **Trading on Equity**

Trading on equity, also known as financial leverage, refers to the practice of using borrowed funds (debt) to increase the return on equity. This strategy involves raising debt to finance a portion of a company's operations or investments with the expectation that the income generated will be greater than the cost of debt, thereby increasing the returns to equity shareholders.

### **Key Concepts of Trading on Equity**

1. **Debt Financing:** The company raises capital through borrowing, which could be in the form of loans, bonds, or other financial instruments.
2. **Return on Equity (ROE):** The income generated from the use of borrowed funds is expected to exceed the interest costs, thereby increasing the returns available to shareholders.
3. **Amplification of Profits:** When a company earns a higher rate of return on its investment than the interest rate on its debt, the excess returns enhance the overall profitability for equity shareholders.

### **Answer 4A(iii)**

#### **Records of accounts to be maintained by a company**

Section 128 of the Companies Act, 2013 governs the Books of Account, etc., to be kept by Company. Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.

However, all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place.

#### **Manner of Books of Account to be kept in Electronic Mode**

The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India, at all times, so as to be usable for subsequent reference. However, for the financial year commencing on or after April 01, 2023, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change

made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

The books of account and other relevant books and papers referred above shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.

The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches. The information in the electronic record of the document shall be capable of being displayed in a legible form. There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law. However, the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a daily basis.

## PART-II

### Question 5

Magma Ltd. is a manufacturing industry which has a mix of equity and debt to finance its business. The company is growing at a considerable rate prompting the management to go for expansion. The company is considering various alternatives to raise funds for the same.

The capital structure of Magma Ltd. is as follows :

Particulars	Amount (₹)
12% Debentures (first issue)	3,00,000
13% Debentures (second issue)	2,00,000
10% Cumulative Preference Shares	2,50,000
Equity Shares (Face Value of ₹ 10 per share)	6,00,000
Retained Earnings	1,50,000

*Additional Information :*

- (1) Equity shares are sold in the market at ₹ 25 per share. The company is contemplating the declaration of dividend of ₹ 3 per share at the end of the current financial year. The company has a practice of paying all earnings in the form of dividend.
- (2) ₹ 100 per debenture (first issue) redeemable at par has 2% floatation cost and 8 years of maturity. The market price per debenture is ₹ 120.
- (3) The second issue of debentures (₹ 100 each) is redeemable after 5 years and are currently selling at ₹ 90 per debenture.
- (4) ₹ 100 per preference share redeemable at par has 3% floatation cost and 10 years of maturity. The market price per preference share is ₹ 108.

(5) The tax rate applicable to the company is 30%.

(6) The shareholder's tax liability may be assumed as 25% whereas the capital gain tax is 20%.

The CFO of the company is keen at understanding the cost of capital. Accordingly, you are appointed to complete the following tasks :

(1) Find out the weighted average cost of capital using :

(a) Book value weights.

(b) Market value weights.

(2) Further the company also intends to know the market price of the equity shares at the end of the current year using MM approach along with citing the assumptions of the theory.

(3) Assuming the company has sales of ₹ 20 lakh, variable cost of ₹ 12 lakh and fixed cost of ₹ 5 lakh (excluding of interest), calculate operating leverage, financial leverage and combined leverage.

(10+5+5=20 marks)

### Answer 5

#### 1. Weighted Average Cost of Capital (WACC)

<p><b>Cost of Debentures= <math>C_d = \frac{i(1-t)+(MV-NP)/n}{(MV+NP)/2}</math></b></p> <p>i = annual interest payment                  MV = maturity value                  NP= net proceeds                  t = corporate tax rate                  n = number of years to maturity</p>			
(i) $C_d_{\text{(First issue)}} = \frac{i(1-t)+(MV-NP)/n}{(MV+NP)/2}$	$\frac{12(1-0.3) + (100-98)/8}{(100+98)/2} =$	$\frac{8.4 + 0.25}{99} = \frac{8.65}{99}$	= 0.087
(ii) $C_d_{\text{(Second issue)}} = \frac{i(1-t)+(MV-NP)/n}{(MV+NP)/2}$	$\frac{13(1-0.3) + (100-100)/5}{(100+100)/2} =$	$\frac{9.1 + 0}{100} = \frac{9.1}{100}$	= 0.091
<p><b>Cost of Preference Shares(<math>C_p</math>) = <math>\frac{PD + (MV-NP)/n}{(MV + NP)/2}</math></b></p> <p>PD= amount of annual preference dividend</p>			

(iii) $C_p = \frac{PD+(MV-NP)/n}{(MV + NP)/2} = \frac{10+(100-97)/10}{(100+97)/2}$	$\frac{10+0.3}{98.5} = \frac{10.3}{98.5}$	$= 0.1046$	
<p><b>Cost of Equity Shares Capital (<math>C_e</math>) = <math>\frac{DPS}{MP \text{ (or NP)}}</math></b></p> <p>DPS= Expected Dividend per share  MP= Current Market Price per share  NP= Net proceeds per share</p>			
(iv) $C_e =$	$= 3/25 = 0.12$		
<p><b>Cost of Retained Earnings (<math>C_r</math>) = <math>\frac{DPS(1+T_1)(1-b)}{MP(1-T_2)}</math></b></p> <p><math>T_1</math> = marginal tax rate applicable to individual shareholder  <math>T_2</math> =capital gains tax</p>			
(iv) $C_r =$	$3(1-0.25)/25(1-0.2) = 2.25/20 = 0.1125$		

**Weighted Average Cost (Book Value Weights)**

Source	Amount in ₹	Weights	Cost	Weighted Average
Equity Shares	600000	0.4	0.12	0.048
10% Cumulative Preference Shares	250000	0.167	0.1046	0.0175
12% Debentures (first issue)	300000	0.2	0.087	0.0174
13% Debentures (second issue)	200000	0.133	0.091	0.0121
Retained Earnings	150000	0.1	0.1125	0.0113
<b>Total</b>	<b>1500000</b>	<b>1.000</b>		<b>0.1063 or 10.63%</b>

**Weighted Average Cost (Market Value Weights)**

Source	Amount in ₹	Weights	Cost	Weighted Average
Equity Shares	15,00,000	0.61	0.12	0.0732
10% Cumulative Preference Shares	2,70,000	0.11	0.1046	0.0115

12% Debentures (first issue)	3,60,000	0.146	0.087	0.0127
13% Debentures (second issue)	1,80,000	0.073	0.091	0.0066
Retained Earnings	1,50,000	0.061	0.1125	0.0069
Total	24,60,000	1.000		0.1109 or 11.09%

## 2. Market Price of equity shares at the end of the current year

$$P_0 = \frac{D_1 + P_1}{1 + K_e}$$

Where,

$K_e$  = Cost of Equity

$D_1$  = Dividend to be received at the end of the period

$P_1$  = Market Price of equity shares at the end of the current year

$$P_1 = P_0(1 + k_e) - D_1 = 25(1 + 0.12) - 3 = 28 - 3 = ₹ 25$$

### Assumptions of M-M Hypothesis

1. The capital markets are perfect. Perfect capital markets imply that
  - a) Information is freely available to all,
  - b) Transaction and floatation costs do not exist and
  - c) No Investor is large enough to affect the market price of a share.
2. Investors behave rationally.
3. There are either no taxes or there are no differences in the tax rates applicable to dividends and capital gains. This means that investors value a rupee of dividend as much as a rupee of capital gains.
4. The firm has a fixed Investment policy.
5. Risk or uncertainty does not exist, (e., Investors are able to forecast future prices and dividends with certainty and one discount rate is appropriate for all securities at time periods.

## 3. Calculation of Leverage

	Amount in ₹
Sales	20,00,000
Less: Variable Cost	12,00,000
Contribution	8,00,000
Less: Fixed Cost	5,00,000
Earnings before Interest and Tax (EBIT)	3,00,000
Interest: (36,000 + 26,000)	62,000

Profit before Tax (PBT)	2,38,000
Tax	71,400
Profit after tax (PAT)	1,66,600

$$\begin{aligned}\text{Operating Leverage (OL)} &= \text{Contribution/EBIT} \\ &= ₹8,00,000/₹3,00,000 \\ &= 2.67\end{aligned}$$

$$\begin{aligned}\text{Financial Leverage (FL)} &= \text{EBIT/EBT} \\ &= ₹3,00,000/(₹3,00,000 - ₹62,000) \\ &= ₹3,00,000/₹2,38,000 \\ &= 1.26\end{aligned}$$

$$\begin{aligned}\text{Combined Leverage} &= \text{OL} \times \text{FL} \\ &= 2.67 \times 1.26 = 3.36\end{aligned}$$

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

### Question 6

- (a) An investor is considering purchase of a new investment for ₹ 15,00,000. The Investor has two options – Option M and Option N and their expected cash inflow are as below :

Year	Option M (Amount in ₹)	Option N (Amount in ₹)
1	1,52,000	3,45,000
2	2,36,000	7,25,000
3	7,00,000	8,00,000
4	5,00,000	3,00,000
5	3,57,000	10,00,000

The investor has a target return of 12%. Risk premium rates are 3% for Investment Option M and 7% for Investment Option N.

Discount factors	10.00%	12.50%	15.00%	18.00%	19.00%
1	0.909	0.889	0.870	0.847	0.840
2	0.826	0.790	0.756	0.718	0.706
3	0.751	0.702	0.658	0.609	0.593

4	0.683	0.624	0.572	0.516	0.499
5	0.621	0.555	0.497	0.437	0.419

Which investment should be preferred ?

(5 marks)

(b) ABD Limited has provided the following information :

Earnings per share = ₹ 25

Dividend per share = ₹ 9

Cost of capital = 12%

Internal rate of return (IRR) on investment = 16%.

You are required to compute the market price per share using :

- (a) Gordon's formula  
(b) Walter's formula.

(5 marks)

(c) Two components A and B are used as follows :

Normal usage	3,000 units
Maximum usage	4,500 units
Minimum usage	1,500 units

Units	A	B
Re-order Quantity (units)	20,000	40,000
Re-order Period	4 to 6 weeks	2 to 4 weeks

Calculate :

- (i) Re-order Level  
(ii) Maximum Level  
(iii) Minimum Level  
(iv) Average Inventory.

(5 marks)

(d) Share price of P Limited was trading at the following prices at NSE on various trading sessions :

Trading Session	Share Price of P Limited (₹)
1	4344
2	4254
3	4211

4	4308
5	4487
6	4213
7	4240
8	4112
9	4061
10	4414
11	4030
12	4336
13	4230
14	4392

Calculate RSI from the above data. Comment if share is overbought.

(5 marks)

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

**Question 6A.**

- (i) ‘‘The concept of negative working capital is a sign of strong bargaining power, ’ Comment and explain with an example.
- (ii) What is Systematic Risk ? Describe its types.
- (iii) What is Price Rate of Change and Advance-Divide Ratio ?
- (iv) What is Economic Value Added and Market Value Added ? Under what conditions will EVA increase ?

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

**Answer 6(a)**

Option M				Option N			
Discount Rate	15.00%	Present Value Factor (PVF)	Present Value PV (₹)	Discount Rate	19.00%	Present Value Factor (PVF)	Present Value PV (₹)
Year				Year			-
1	1,52,000	0.870	1,32,240	1	3,45,000	0.840	2,89,800
2	2,36,000	0.756	1,78,416	2	7,25,000	0.706	5,11,850

3	7,00,000	0.658	4,60,600	3	8,00,000	0.593	4,74,400
4	5,00,000	0.572	2,86,000	4	3,00,000	0.499	1,49,700
5	3,57,000	0.497	1,77,429	5	10,00,000	0.419	4,19,000
			12,34,685				18,44,750
		Outflow	-15,00,000				-15,00,000
		NPV	<b>-2,65,315</b>				<b>3,44,750</b>

Investor will prefer option N for Investment due to higher NPV

### Answer 6(b)

#### a) Gordon's approach

$$P_0 = \frac{E(1-b)}{k_e - g} = \frac{9}{0.12 - 0.1024} = 9/0.0176 = ₹ 511.36$$

Where

$P_0$  = Price of equity share

E = Earnings per share

b = Retention Ratio or percentage of earnings retained

$1 - b$  = D/P Ratio, i.e., percentage of earnings distributed as dividends

CR or  $k_e$  = Capitalization rate of the firm or Cost of equity capital

br = Growth rate in  $r = g$ , i.e., rate of return on investment on an all-equity firm

$E(1-b) = D$  = Dividend per share

where growth ( $g$ ) = br

b = retention ratio =  $\frac{EPS - DPS}{EPS} = \frac{25 - 9}{25} = 0.64$

Growth =  $b \times r = 0.64 \times 0.16 = 0.1024$

#### b) Walter's Approach

$$P = \frac{D + (R/k_e)(E-D)}{k_e} = \frac{9 + 0.16/0.12(25-9)}{0.12} = \frac{9 + 0.16/0.12(25-9)}{0.12} = \frac{30.33}{0.12} = ₹ 252.78$$

Where, P = Market price per share

D = Dividend per share

R = Internal rate of return

E = Earnings per share

k = Cost of equity capitalization rate.

**Answer 6(c)****Inventory Level Calculations**

Re-order Level	Maximum Usage x Maximum Re-order Period	
	A	B
Units	$4,500 \times 6 = 27,000$	$4,500 \times 4 = 18,000$

Maximum Level	Re-order Level + Re-order Quantity – (Minimum Usage x Minimum Re-order Period)	
	A	B
Units	$27,000 + 20,000 - (1,500 \times 4) = 41,000$	$18,000 + 40,000 - (1,500 \times 2) = 55,000$

Minimum Level	Re-order Level – (Normal Usage x Normal Re-order Period)	
	A	B
Units	$27,000 - (3,000 \times 5) = 12,000$	$18,000 - (3,000 \times 3) = 9,000$

Average Inventory	Minimum Level + $\frac{1}{2}$ Re-order Quantity	
	A	B
Units	$12,000 + \frac{1}{2} \text{ of } 20,000 = 22,000$	$9,000 + \frac{1}{2} \text{ of } 40,000 = 29,000$

Or

Average Inventory	(Minimum Level + Maximum Level)/2	
	A	B
Units	$(12,000 + 41,000)/2 = 26,500$	$(9,000 + 55,000)/2 = 32,000$

**Answer 6(d)****Relative Strength Index (RSI)**

Trading Session	Share Price in ₹	Gain in ₹	Loss in ₹
1.	4344	-	-
2.	4254	-	90
3.	4211	-	43
4.	4308	97	-
5.	4487	179	-

6.	4213	-	274
7.	4240	27	-
8.	4112	-	128
9.	4061	-	51
10.	4414	353	-
11.	4030	-	384
12.	4336	306	-
13.	4230	-	106
14.	4392	162	-
		1124/6 ₹ 187.33	1076/7 ₹ 153.71

$$RS = \frac{\text{Average Gain in Per Day}}{\text{Average Loss in Per Day}} = \frac{187.33}{153.71} = 1.219$$

$$RSI = 100 - (100/1+RS) = 100 - (100/1+1.219) = 54.93$$

An RSI reading of 70 or above indicates an overbought situation whereas a reading of 30 or below indicates an oversold condition. Hence, the share is not overbought as RSI is below 70.

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

**Answer 6A(i)**

**Concept of negative working capital is a sign of strong bargaining power.** Negative working capital implies a situation where current liabilities are more than current assets. Generally, a negative working capital is a sign that an entity maybe facing bankruptcy or serious financial problems. Poor working capital management could lead to increased borrowing and late payments to creditors. This could result in lower credit rating. Also, the entity may have to forego revenue growth opportunities due to lack of working capital.

Another situation where a company can have negative working capital is where inventory is sold and cash generated in quick time. These are companies with the bargaining power to take advance against supply of goods or services or demand a slightly longer credit period from suppliers. Negative working capital can be a sign of managerial efficiency in a business with low inventory and accounts receivable.

Low working capital requirements also imply a possible higher return on capital employed.

**Example:**

Suppose Wal-Mart orders 500,000 copies of a DVD to Warner Brothers and they were supposed to pay within 30 days. What if by the sixth or seventh day, Wal-Mart had already put the DVDs on the shelves of its stores across the country? By the twentieth day, they may have sold all of the DVDs. Here, Wal-Mart received the DVDs, shipped them to its stores, and sold them to the customer (making a profit in the process), all before they had paid Warner Brothers! If Wal-Mart can continue

to do this with all of its suppliers, it doesn't really need to have enough cash on hand to pay all of its accounts payable. As long as the transactions are timed right, they can pay each bill as it comes due, maximizing their efficiency. The bottom line is that a negative working capital can also be a sign of managerial efficiency in a business with low inventory and accounts receivable (which means they operate on an almost strictly cash basis).

### Answer 6A(ii)

#### Systematic Risk

Systematic risk is due to the influence of external factors on an organization. Such factors are normally uncontrollable from an organization's point of view. Systematic risk is a macro in nature as it affects a large number of organizations operating under a similar stream or same domain. It cannot be planned by the organization. In this way economic, political and sociological changes are sources of systematic risk.

For example, if an economy moves into recession or if there is a political upheaval, it will cause the prices of nearly all the securities, whether bond or equity to decline. Firms with high systematic risk tend to be those whose sales, profits and stock prices follow the general trend in the level of economic or stock market activity. These may include companies that deal in basic industrial goods like automobile manufactures.

#### Types of systematic risk:

##### 1. Interest rate risk

Interest-rate risk is the variation in the single period rates of return caused by the fluctuations in the market interest rate. It particularly affects debt securities as they carry the fixed rate of interest.

##### 2. Market risk

Market risk is associated with consistent fluctuations seen in the trading price of any particular shares or securities. It arises due to rise or fall in the trading price of listed shares or securities in the stock market.

##### 3. Purchasing power or inflationary risk

Purchasing power risk is also known as inflation risk. It is so, since it emanates (originates) from the fact that it affects a purchasing power adversely. It is not desirable to invest in securities during an inflationary period.

### Answer 6A(iii)

#### Price Rate of Change

The Price Rate of Change (ROC) is a momentum-based technical indicator that measures the percentage change in price between the current price and the price a certain number of periods ago. The ROC indicator is plotted against zero, with the indicator moving upwards into positive territory if price changes are to the upside, and moving into negative territory if price changes are to the downside.

A rising ROC above zero indicates an uptrend in security prices whereas a falling ROC below zero indicates a downtrend in security prices.

The ROC will hover near zero indicating a consolidation in security price.

$$\text{ROC} = \frac{\text{Closing Price } p - \text{Closing Price } p-n}{\text{Closing Price } p-n} \times 1000$$

Where

Closing Price  $p$  - Closing price of the most recent period

Closing Price  $p-n$  - Closing price  $n$  periods before most recent period

### **Advance-Decline Ratio**

The Ratio of number of stocks that increase to the number of stocks that have declined. If the ratio is more than one, trend is assumed to be bullish. If the ratio starts declining a change in trend is signaled.

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

Economic Value Added (EVA)

Economic Value Added (EVA) is the after tax cash flow generated by a business minus the cost of the capital it has incurred by deploying capital to generate that cash flow. Representing real profit versus paper profit, EVA underlines shareholder value, increasingly the main target of leading companies strategies. Shareholders are the players who provide the firm with capital to gain from their investment.

There are two key components to EVA i.e. the net operating profit after tax (NOPAT) and the capital charge, which is the cost of capital times the amount of capital. In other words, it is the total pool of profits available to provide cash return to those who provided capital to the firm.

The capital charge is the product of the cost of capital times the capital tied up in the investment. In other words, the capital charge is the cash flow required to compensate investors for the riskiness of the business given the amount of capital invested. On the one hand, the cost of capital is the minimum rate of return on capital required to compensate debt and equity investors for bearing risk-a cut-off rate to create value and capital is the amount of cash invested in the business, net of depreciation.

EVA= Operating Profit - Capital Charge

EVA= NOPAT- (Cost of Capital\* Capital)

EVA represents value added to shareholders by generating operating profits in excess of cost of capital employed in business. EVA will increase if:

- Operating profits grow without employing additional capital i.e., through greater efficiency
- Additional capital is invested in the projects that give higher returns than the cost of procuring new capital
- Unproductive capital is liquidated i.e. curtailing unproductive use of capital

### **Market Value Added (MVA)**

Market value added (MVA) is a calculation that shows the difference between the market value of a company and the capital contributed by all investors, both bondholders and shareholders. In other words, it is the market value of debt and equity minus all capital claims held against the company. It is calculated as:

$MVA = V - K$

V = market value of firm including the value of firm's equity and debt

K = Total capital invested in the firm. Capital= Equity+ Debt capital