

# GUIDELINE ANSWERS

## EXECUTIVE PROGRAMME (SYLLABUS 2022)

DECEMBER 2023

GROUP 1



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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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:

<b>CS Examinations</b>	<b>Applicability of Amendments to Laws</b>
December Session	upto 31 May of that Calender year
June Session	upto 30 November of previous Calender Year

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**EXECUTIVE PROGRAMME EXAMINATION**

DECEMBER 2023

**JURISPRUDENCE, INTERPRETATION & GENERAL LAWS***Time allowed : 3 hours**Maximum marks : 100**Total number of questions : 6***NOTE :** *Answer ALL Questions.***Question 1**

*The Principal of a convent school, Agartala, Sister Mary Fernandez, filed a case against two persons named, Ali Kehtan and John Augustine alleging that they had made defamatory remarks in the complaint which they had submitted to the Deputy Commissioner, Agartala. The accused stated in the complaint “that the building of the aforesaid school is quite unsafe and it may bring about any disaster upon the students of this school at any time; that it as a money minting institution; that the indiscipline among the students is to an unlimited extent and this has created a great problem for the nearby residents. That it appears that this school has become a meeting place for the both sexes and the principal, Sister Mary Fernandez is turning a deaf ear towards the character of the students; that if these are not checked in time, they may become a great problem for the city”.*

*In an enquiry before the Sub Divisional Magistrate (SDM), the allegations of the accused were found to be false and their complaint was dismissed.*

*Consequently, Sister Mary Fernandez approaches police station to file criminal defamation case against the accused persons. Police registers a case of defamation, a bailable offence against Ali Kehtan and John Augustine, who later files an application in Court asking for anticipatory bail.*

*Sister Mary Fernandez also files civil suits seeking compensation for defamation. In the reference of above facts answer the following questions :*

- (a) *What is criminal defamation in Indian law ?*  
(4 marks)
- (b) *Is the application for ‘anticipatory bail’ by accused Ali Kehtan and John Augustine maintainable ? Explain.*  
(4 marks)
- (c) *Whether the complaint filed by the Ali Kehtan and John Augustine against Sister Mary Fernandez leads to Libel defamation or Slander defamation ? Explain.*  
(3 marks)
- (d) *What is the jurisdiction of the Court to try civil suit ‘where wrong done to the person’ ?*  
(3 marks)
- (e) *What is ‘publication of defamatory words’ ?*  
(3 marks)
- (f) *What is the time period of limitation for compensation in defamation ?*  
(3 marks)

**Answer 1(a)**

According to Section 499 of Indian Penal Code, 1860 whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1: It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.— It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.— An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.— No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

**Answer 1(b)**

Section 438 of the Code of Criminal Procedure, 1973(Cr. P.C.) provides the provisions relating to 'Anticipatory Bail'. According to section 438 of Cr. P.C. when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

Defamation being a bailable offence and anticipatory bail under Cr.P.C. can be given only to a person who apprehends arrest for a non-bailable offence. Hence in the given situation application of Ali Kehtan and John Augustine is non-maintainable.

**Answer 1(c)**

In libel, the defamatory statement is a representation made in some permanent and visible form, such as written words, caricatures, cinema films, effigy, statue, recorded words, printing or pictures.

In slander, it is made with spoken words or in some other transitory form, whether visible or audible, statement of temporary nature such as gestures, spoken words or inarticulate but significant sounds.

In the given situation, the complaint made can lead to be Libel defamation of Sister Mary Fernandez.

**Alternate Answer 1(c)**

Eight Exception provided under section 499 of the Indian Penal Code, 1860 provides that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration to the eight exception provided under section 499 of the Indian Penal Code, 1860, provides that if A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

In the given situation, the complaint made may not lead to defamation.

**Answer 1(d)**

Section 19 of the Code of Civil Procedure, 1908 provides the provisions relating to Suits for compensation for wrongs to person or movables. It states:

Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

**Answer 1(e)**

'Publication of defamatory words' means the making known of the defamatory matter after it has been written to some person other than the person of whom it is written. The ambit of 'publish' is very wide. The publication of defamatory matter means that it is communicated to some person other than the person about whom it is addressed. In essence, publication is the communication of the statement to any third party i.e. not the claimant or the defendant.

**Answer 1(f)**

The time periods of limitation for compensation in defamation are as under:

For compensation for libel: One year from when the libel is published.

For compensation for slander: One year when the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.

**Question 2**

- (a) *The modern Indian law as administered in courts is derived from various sources and these sources fall under two heads i.e. Primary Sources and Secondary Sources. Judicial precedents are considered as primary source of Indian laws. What do you mean by Judicial Precedents ?*

*Read the following statements. Determine and explain what kind of precedent it is :*

- (i) *'Vishaka guidelines' were stipulated by the Supreme Court of India, in Vishaka and others v. State of Rajasthan case in 1997, regarding prevention of sexual harassment at workplace. They acted as precedent for many cases during 1997-2013 until Protection of Women from Sexual Harassment Act, 2013 was enacted.*
- (ii) *The decision of one High Court may not be binding on other High Court. But the decisions can give a principle which may be helpful for the other High Court. The other High Court may or may not follow the principle of the decision.*

(5 marks)

(b) *Ramjilal, the donor made two gifts to his nephew Gajendra, the donee. The first gift was his one immovable property situated in Delhi. The second gift were three movable properties. He did not get the gift deed registered for both movable and immovable properties and died. Decide whether Gajendra entitled to both the gifts or not ? Discuss.*

(4 marks)

(c) *A, the son of B sold the property of B presuming that he will get the property of B after the death of B. Is it valid ? Explain.*

(3 marks)

(d) *Raiz draws a cheque of ₹ 50,000 on his own account payable to Faiz but has only ₹ 49,000 in his account. Faiz presents the same to the bank but the cheque bounces due to insufficient funds in Raiz's account. Whether the above matter can be referred for amicable settlement through mediation. Explain.*

(3 marks)

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

Judicial Precedent means the guidance or authority of past decisions of the courts for future cases. Only such decisions which lay down some new rule or principle are called judicial precedents.

- (i) In the given situation, it is 'Original precedent' because 'Vishaka guidelines' created and applied a new rule of law regarding prevention of sexual harassment at workplace. It was law for future because its guidelines were applied in future similar cases.
- (ii) In the given situation, it is Persuasive Precedent. A persuasive precedent is one which the judges are not obliged to follow but which they will take into consideration and to which they will attach great weight as it seems to them to deserve. For example, in certain circumstances the decision of one High Court may not binding on other High Court but the decisions can give a principle which may be helpful for the other High Court. So these types of decisions will have persuasive value.

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

Instruments of gift of immovable Property falls under Documents which are compulsorily registerable under Registration Act, 1908. In case where the donor dies before registration, the document may be presented for registration after his death and if registered it will have same effect as registration in his life time. On registration, the gift deed operates from the date of execution.

It was held by Privy council in *Kalyana Sundram v. Karuppa AIR 1927 PC 42* that while registration is a necessary solemnity for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective. And if it is presented by the person having necessary interest with the within the prescribed period, the Registrar must register it. Neither death nor the express revocation by the donor, is a ground for refusing the registration, provided other conditions are complied with. However, Movable properties are not required to be compulsorily registered under the Registration Act, 1908.

In the given situation, the gift deed of three movable gifts to Gajendra are fully enforceable because its registration is optional.

However, gift of immovable property is compulsorily registrable under the Registration Act, 1908. Hence Gajendra needs to apply for registration of gift deed of immovable property and if it is registered by the Registrar than it shall be considered operative from the date of execution.

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

Section 6 of the Transfer of Property Act, 1882 (TPA) contains some exceptions to the general rule that property of any kind may be transferred. According to section 6(a) of TPA, the chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

Thus, A cannot sell property of B as it is mere chance of an heir apparent succeeding to an estate.

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

In the matter of *Dayawati vs. Yogesh Kumar Gosain (17.10.2017-Del H.C): 2017 SCC Online Del 11032*, the question before Delhi High Court was whether an offence under section 138 of Negotiable Instruments Act can be referred for amicable settlement through mediation. Court stated that “even though an express statutory provision enabling the criminal court to refer the complainant and accused persons to alternate dispute redressal mechanisms (ADR) has not been specifically provided by the legislature, however, the Code of Criminal Procedure, 1973 (Cr.P.C.) does permit and recognize settlement without stipulating or restricting the process by which it may be reached. There is thus no bar to utilizing the ADR including arbitration, mediation, conciliation (recognized under Section 89 of CPC) for the purposes of settling disputes which are the subject matter of offence covered under Section 320 of Cr.P.C.”

### **Question 3**

*In view of the above case, it can be said that the above matter can be referred for amicable settlement through mediation.*

- (a) *A sells two tons of oil to B, and sends one ton of oil by road and remaining one ton of oil by ship. Mr. B receives delivery of the one ton of oil sent by road on August 11, 2022, but before he receives the delivery sent by ship, he becomes insolvent in September, 2022. A, still being unpaid, stops the goods in transit. The official Receiver in B’s insolvency claims the goods.*
- (i) *Decide whether Official Receiver will succeed. Explain.*
- (ii) *Also discuss, can A resell the undelivered one ton of oil ?*

(5 marks)

- (b) *The Government has notified an order under an appropriate Statue in the month of September, 2022 that no one shall buy or sell a particular explosive chemical except under license obtained by the specified authority. Tarun applied in October 2022 and has obtained a license to buy it and was keenly looking for person who had license to sell it. Brju who has no license to sell, represents to Tarun that he has license to sell and induces Tarun to enter into a contract for the sale of a certain quantity of explosive chemical. On January 12, 2023 Tarun pays Brju ₹ 50,000 as earnest money. After few days Tarun learns through one of friend that Brju has no license to sell. Tarun gives a call to Brju to find the truth,*

*Brju convinces Tarun that he shall obtain the license within reasonable time i.e. before due date of delivery but he failed to obtain it. Can Tarun recover advance payment paid to Brju ? Answer with reasons and legal provisions.*

(5 marks)

- (c) *John who had his account in a private bank went to bank to deposit the cash. While he was entering into the bank alongside cash box of the bank was also being carried inside, the security guard in a haste ended up firing John thereby killing him. Mrs. Maria, wife of Mr. John claims that bank is vicariously accountable for the incidence, but the bank argues that it had not given the permission to employee to fire. Is the argument of bank correct ? Decide.*

(5 marks)

### **Answer 3(a)**

- (i) The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price. The right can be exercised by the unpaid seller:

- (1) When the buyer becomes insolvent: The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the court.
- (2) The goods are in transit: The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehouse keeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.

The right to stop in transit may be exercised by the unpaid seller either by taking actual possession of the goods or by giving notice of the seller's claim to the carrier or other person having control of the goods.

In view of the above it can be said that A can stop the goods in transit as B becomes insolvent, hence, Official Receiver will not succeed.

- (iii) According to section 54(2) of Sale of Goods Act, 1930, where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, re-sell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re-sale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.

Further, according to section 54(4) of Sale of Goods Act, 1930, where the seller expressly reserves a right of re-sale in case the buyer should make default, and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

In view of the above, A can resell the undelivered one ton of oil in accordance with above provisions.

**Answer 3(b)**

The definition of Fraud has been provided under section 17 of the Indian Contract Act, 1872. 'Fraud' is an untrue statement made knowingly with the intent to deceive. The party defrauded can avoid the contract and also claim damages. The chief ingredients of fraud are: a false representation or assertion, of fact (and not mere opinion), made with the intention that it should be acted upon, the representation must have actually induced the other party to enter into the contract and so deceived him, the party deceived must thereby be indemnified, for there is no fraud without damages, and the statement must have been made either with the knowledge that it was false or without belief in its truth or recklessly without caring whether it was true or false. It is immaterial whether the representation takes effect by false statement or with concealment.

Therefore, Tarun can recover advance payment paid from Brju because it is voidable contract on account of 'fraud' committed by Brju. Thus, Tarun can rescind/ cancel/ avoid the contract and can sue to recover the advance paid to Brju. Also Tarun has right to claim compensation for any damage which he has sustained through non-fulfilment of the contract.

**Alternate answer to above paragraph**

A voidable contract is initially considered legal and enforceable but can be rejected by one party if the contract is discovered to have defects. If a party with the power to reject the contract chooses not to reject the contract despite the defect, the contract remains valid and enforceable.

Now, in the given situation Brju defrauded Tarun to enter into contract. But later on Tarun found that contract was entered into by fraud. Tarun could have avoided the contract at that time and can recover advance paid.

But Brju convinced Tarun that he shall obtain the license within reasonable time, this means Tarun does not rejected the contract and agreed to continue an illegal agreement, as buying & selling of explosive chemical without licence has been prohibited by Government.

In view of the above, Tarun cannot recover advance paid if Brju failed to obtain the license as illegal agreement is not enforceable at law.

**Answer 3(c)**

General principles of vicarious liability is based on two maxims as follows:

- i. '*Qui facit per alium facit per se*', which means, "One who does an act through another is deemed in law to do it himself".
- ii. '*Respondeat superior*' which means, "Let the principal be liable" / "let the superior be responsible" for their subordinate.

Vicarious liability is a form of strict, secondary liability. Such liability arises in relationships such as of master and servant, where master shall be liable for the act of the servant done in course of employment. An act is said to be in course of employment if:

- i. The master has directly authorized the act to the servant;
- ii. The act done is authorized act done wrongly.

The wrong doing of an authorized act will make the master liable.

The facts in the instant case are, however, very clear that the incident in question took place when the cash box was being brought into the bank premises and the deceased was also entering the bank premises. If the security guard committed an error in

perceiving the act of the deceased as a threat to the cash box as an impediment of protection of the property of the bank from a possible danger from any third party, the act of the security guard causing death of deceased was in the course of the employment of the security guard and, therefore, it is not possible to accept the defence pleaded by the bank that it is not vicariously liable.

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

**Question 4**

- (a) *Under Limitation Act, 1963 the limitation period for filing a particular suit is 3 years. When the limitation period commenced Akash was minor of age 13 years. Due to his legal disability he couldn't institute the suit. Decide with reasons whether Akash can file suit on cessation of the minority ?*

(5 marks)

- (b) *Does Section 79 of Information Technology Act, 2000 as originally enacted deal with effect of other laws or not ? Answer in light of recent decision by Supreme Court of India in the case of Google India Private Ltd. vs. Vishaka Industries and Ors. (2019).*

(5 marks)

- (c) *In the latest decision, Supreme Court of India in the case Satender Kumar Anil vs. Central Bureau of Investigation and Ors (2022) took note of the continuous seeking bail after filing final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure (Cr.P.C.) and thus made an endeavor to categorize the types of offenses to be used as guidelines for the future. It issued directions for the investigating agencies and also for the courts, however it cleared that these directions may be subject to State amendments. Is right to bail is on touchstone of Article 21 of Indian Constitution ? State the direction issued under this case.*

(5 marks)

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

**Question 4**

- (i) *Explain the grounds for setting aside of an Arbitral Award under the Arbitration and Conciliation Act, 1996.*
- (ii) *Explain the concept and verification of e-stamping.*
- (iii) *Information Technology Act, 2000 provides legal framework for electronic governance by giving recognition to electronic records and digital signature. Often digital signature is considered as synonym of electronic signature under the Act. Is it correct to consider both as same ? Discuss.*

(5 marks each)

**Answer 4(a)**

Section 6 of the Limitation Act, 1963 is an enabling Section to enable persons under disability to exercise their legal rights within a certain time. Section 7 supplements Section 6 and Section 8 controls these Sections, which serves as an exception to Section 6 and 7. Hence, under Limitation Act minority or disability falls within Special exceptions which imposes limitation on concessions under Section 6 and 7 to the person under disability includes minority up to maximum of the 3 years as the period of limitation for any suit or application after cessation of minority or disability.

This exception applies to all suits except suits to enforce rights of pre-emption. Further the period of three years has been counted, not from the date of attainment of majority by the person under disability, but from the date of cessation of minority/ disability.

Thus, Akash can file suit on cessation of minority.

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

According to section 79(1) of the Information Technology Act, 2000 an intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by him. According to section 79(2)(c), the provisions of sub-section (1) shall apply if the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

In the case of *Google India Private Limited vs. Visakha Industries and Ors.* (10.12.2019 - SC) the Supreme Court decided that Section 79 of Information Technology Act, 2000(the Act) as originally enacted, did not deal with the effect of other laws.

The Supreme Court *inter alia* decided that the finding by the High Court that in the case on hand, in spite of the complainant issuing notice, bringing it to the notice of the Appellant about the dissemination of defamatory matter on the part of the first Accused through the medium of Appellant, Appellant did not move its little finger to block the said material to stop dissemination and, therefore, cannot claim exemption Under Section 79 of the Act, as it originally stood, is afflicted with two flaws. In the first place, the High Court itself has found that Section 79, as it originally was enacted, had nothing to do with offences with laws other than the Act. We have also found that Section 79, as originally enacted, did not deal with the effect of other laws. In short, since defamation is an offence Under Section 499 of the Indian Penal Code, Section 79, as it stood before substitution, had nothing to do with freeing of the Appellant from liability under the said provision.

In view of the above discussion, it can be said that Section 79 of Information Technology Act, 2000 as originally enacted does not deal with effect of other laws.

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

In the case of *Satender Kumar Antil vs. Central Bureau of Investigation and Ors.* (11.07.2022 - SC), taking note of the continuous supply of cases seeking bail after filing of the final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure ("the Code"), an endeavour was made by Supreme Court to categorize the types of offenses to be used as guidelines for the future.

The Supreme Court *inter alia* said that "The principle that bail is the Rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India."

Further, in this case, the Supreme Court issued certain directions, however they may be subject to State Amendments. These directions are meant for the investigating agencies and also for the courts. The directions are as under:

- a. The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.
- b. The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in *Arnesh Kumar* (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

- c. The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the Accused for grant of bail.
- d. All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed Under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.
- e. There need not be any insistence of a bail application while considering the application Under Section 88, 170, 204 and 209 of the Code.
- f. There needs to be a strict compliance of the mandate laid down in the judgment of this Court in Siddharth (supra).
- g. The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.
- h. The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.
- i. While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.
- j. An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.
- k. Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.
- l. All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months.

In view of the above mentioned, it can be said that Right to Bail is on the touchstone of Article 21 of Indian Constitution.

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

Section 34 of the Arbitration and Conciliation Act, 1996 provides the provisions relating to grounds for setting aside an Arbitral Award. Section 34(2) states:

- (a) An arbitral award may be set aside by the Court only if—
  - i. a party was under some incapacity, or
  - ii. the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

- iii. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
  - iv. the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
  - v. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
- (b) the Court finds that,
- i. the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
  - ii. the arbitral award is in conflict with the public policy of India.

#### **Explanation 1**

For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81 ; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

#### **Explanation 2**

For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

Further as per Section 34(2A), an arbitral award arising out of arbitrations, other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award. Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re appreciation of evidence.

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

E-stamping is a computer based application and a secured electronic way of stamping documents. The prevailing system of physical stamp paper/franking is being replaced by E-stamping system. To reduce the instances of counterfeits and errors, government introduced the e-stamping facility in 2013. The Stock Holding Corporation of India Limited (SHCIL) is the Central Record Keeping Agency (CRA).

Through modernisation, there has been an introduction of E-stamp or as known as an electronic stamp. E-Stamping is a computer-based procedure and a secure manner for the state to pay non-judicial stamping duties. The prevailing system of physical stamp paper / franking is being replaced by E-Stamping system.

### Verification of e-stamping

An e-Stamp can be verified online by clicking on verify e-Stamp certificate and entering the required details i.e

1. State
2. Certificate Number (UIN)
3. Stamp Duty Type ( Description of Document )
4. Certificate Issue Date
5. 6 character alphanumeric string

UIN is a Unique system generated number mentioned on the e-Stamp Certificate. Anybody, having the Unique Identification Number, can check the authenticity of the Certificate through [www.shcilestamp.com](http://www.shcilestamp.com).

### Answer 4A(iii)

Digital Signature and Electronic Signature are not same as per the Information Technology Act, 2000. The differences between Electronic Signature and Digital Signature are as under:

Basis of Distinction	Electronic Signature	Digital Signature
Definition Section	Section 2(1)(ta)	2(1)(p)
Meaning	An electronic signature is a digital form of a web link signature that is legally binding and secure	Digital Signature is a secured signature that works with an electronic signature and relies on public key
Purpose	It is used for verifying a document.	It is used for securing a document.
Validation	The validation of electronic signatures is not performed by any trusted certificate authorities or trust service providers.	While the validation of digital signature is performed by trusted certificate authorities or trust service providers.
Security	It is vulnerable to tampering as there are fewer security features in electronic signatures.	While it is highly secure as it comprised of more security features.
Verification	Electronic signatures cannot be verified.	A digital signature can be verified.
Types	Verbal, electronic ticks, or scanned signatures are the common types of e-signatures.	Types of digital signatures include Adobe and Microsoft.

Utility	It is simple to use, but it has a lesser level of evidential value.	It is generally preferred because of more authenticity.
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### Question 5

- (a) *Right to Information Act, 2005 specifies the manner in which requests may be made by a citizen to the authority for obtaining the information. Discuss.*
- (b) *What is the procedure for the commencement of conciliation proceedings under the Arbitration and Conciliation Act, 1996 ? How many conciliators can be there in these proceedings ?*
- (c) *Referring to Civil Procedure Code, 1908, answer the following :*
- (i) *Can a case triable by Special Judge as provided under Criminal Law Amendment Act, 1952 be transferred to High Court ? Discuss.*
- (ii) *Discuss the jurisdiction of Courts depending upon their powers.*

(5 marks each)

### Answer 5(a)

According to section 6 of the Right to Information Act, 2005 (the Act) a person, who desires to obtain any information under the Act shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to:

- (a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;
- (b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

However, where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

### Answer 5(b)

#### Procedure for commencement of Conciliation Proceedings

According to Section 62(1) of Arbitration and Conciliation Act, 1996, the party initiating conciliation shall send to the other party a written invitation to conciliate, briefly identifying the subject of the dispute.

Section 62(2) states that Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

Section 62(3) states that if the other party rejects the invitation, there will be no conciliation proceedings.

Section 62(4) states that if the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

### Number of conciliators

According to Section 63 of Arbitration and Conciliation Act, 1996, there shall be one conciliators unless parties agree for two or more. Where there are more than one conciliators, they ought as general rule, to act jointly.

### Answer 5(c)

- (i) In the case *A.R. Antulay vs. R.S. Nayak and Ors. (29.04.1988 - SC) : 1988 AIR 1531*, the issue was whether the a case triable by Special Judge as provided under Criminal Law Amendment Act, 1952 could be transferred to High Court or not. It was held that Court by its directions cannot confer jurisdiction to High Court of Bombay to try any case by itself for which it does not possess such jurisdiction.

The power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal. Parliament alone can do it by law and no Court, whether superior or inferior or both combined can enlarge the jurisdiction of a Court or divest a person of his rights of revision and appeal. Thus, a Court by its discretion cannot confer jurisdiction to High Court to try any case by itself for which it does not possess such jurisdiction.

- (ii) The jurisdiction of Courts depending upon their powers are as under:
- (a) **Original Jurisdiction-** A court tries and decides suits filed before it.
  - (b) **Appellate jurisdiction-** A court hears appeals against decisions or decrees passed by sub- ordinate Courts.
  - (c) **Criminal and Appellate jurisdiction-** the Supreme Court, the High Courts and the District Courts have both original and appellate jurisdictions in various matters.

A territorial limit of jurisdiction for each court is fixed by the Government. Section 6 of the Code of Civil Procedure, 1908 deals with Pecuniary jurisdiction. Section 9 of Civil Procedure Code states that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred.

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

#### Question 6

- (a) *Abhinav contracts with Manoj that he will paint his house located in Azad Nagar within a month and during that time he will not take any other painting job in other premises. But Abhinav breaches the contract. Manoj files suit seeking decree for specific performance against Abhinav. Will Manoj succeed? Answer marking the difference between injunction and specific performance.*

(5 marks)

- (b) *Discuss with reasons the following given cases under the Indian Evidence Act, 1872 :*

(i) *A sells his horse to B. B asks 'Is horse sound?', A says to B "Go and ask C, C knows all about it". C says 'Horse is sound', Statement by C is confession or admission ?*

(ii) *A commits a murder of his colleague in spur of heated argument. A, on reaching home confesses the offence before his wife. The wife was summoned by the Court to testify against her husband, who was on trial for allegedly committing murder. Can A's wife act as witness ?*

(5 marks)

(c) *A promissory note is executed by Raja and Suraj and a stamp is afterwards affixed and cancelled by Raja by again signing it, the stamping has taken place subsequent to the execution. In this case, are the provisions of Indian Stamp Act, 1899 complied ?*

(5 marks)

(d) *Arun, a husband enters into a registered agreement with his wife Radha, to pay his earnings to her. Is it a valid contract ? Will the answer be different if the husband by a registered document, after referring to quarrels and disagreement between himself and his wife, promises to pay his wife a sum of money for her maintenance and separate residence.*

(5 marks)

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

**Question 6A**

(i) *What principle of statutory interpretation shall be applied by the Courts when there is conflict between General provision and Special provision ?*

(ii) *'No law can clothe administrative action with a complete finality even if the law says so, for the courts always examine the ambit and even the mode of its exercise to check its conformity with fundamental rights.' In the light of the statement discuss the judicial review at the stage of exercise of administrative discretion.*

(iii) *'A custom will be valid and will have binding force only if it fulfills certain essential conditions.' Elucidate.*

(iv) *'In civil suits sometimes Court allows the defendants claims to set-off against the plaintiff demand any ascertained sum of money legally recoverable by him from plaintiff.' In light of the statement discuss whether in India distinction between Legal and Equitable set-off is recognized ?*

(5 marks each)

**Answer 6(a)**

Section 14 of the Specific Relief Act, 1963 *inter alia* provides that a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms or a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise, cannot be specifically enforced.

In view of the above, Manoj will not succeed in seeking decree for specific performance of contract against Abhinav as contract of painting is a contract of personal nature which depends on personal qualification of Abhinav.

In the given situation contract entered into between Manoj and Abhinav have two stipulations one is positive stipulation that he will paint his house in a month, and another is negative stipulation that he will not accept any other painting job elsewhere. Here, though, Positive stipulation cannot be specifically enforced but negative stipulation can be enforced by taking injunction

The differences between Injunction and Specific Performance are as under:

<b>Specific Performance</b>	<b>Injunction</b>
It is decreed to compel the performance of an active duty	It is decreed to prevent the violation of negative duty
It is enforced when the act agreed to be done is in the performance wholly or partly of a trust	Injunction granted as a preventive relief i.e. preventing a party from doing that which he is under an obligation not to do.
Normally, it deals with contracts	It deals not only with contracts but also with torts and other subjects of equitable nature
If a contract is of positive in its nature, it calls for the relief of specific performance	If a contract is negative in its nature, it calls for the relief of injunction

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

- (i) Section 17 of the Indian Evidence Act, 1872 provides that an admission is 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 in Indian Evidence Act, 1872. 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 according to Section 18 or by a "reference" according to Section 20.

Section 20 of Indian Evidence Act, 1872 provides statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration to section 20 provides as under:

A says to B—"Go and ask C, C knows all about it". C's statement is an admission.

In view of the above it can be said that Statement of C that 'Horse if Sound' is admission.

- (ii) Section 122 of Indian Evidence Act, 1872 provides that no person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

In view of the above provision, it can be said that A's wife cannot act witness unless the person who made communication, or his representative in interest, consents.

**Answer 6(c)**

According to section 17 of Indian Stamp Act, 1899, all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution.

If the executant of a document has already completed the execution of the document and in the eye of law the document, could be said to have been executed, a subsequent stamping, (however close in time) could not render the document as one stamped at the time of execution.

In the case *Rohini v. Fernandes, AIR 1956 Bom 421*, where a promissory note is executed by 'A' and 'B' and a stamp is afterwards affixed and cancelled by 'A' by again signing it, the stamping has taken place subsequent to the execution and hence, the provisions of Section 17 are not complied with.

In view of the above provision and case law, it can be said that the provisions of Section 17 of Indian Stamp Act, 1899 are not complied in the given situation.

**Answer 6(d)**

The general rule is that an agreement made without consideration is void. But Section 25 of the Indian Contract Act, 1872 lays down certain exceptions which make a promise without consideration valid and binding.

Section 25(1) *inter alia* provides an exception to this general rule. It states that an agreement made without consideration is void, unless it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other.

According to the case *Poonoo Bibi v. FyazBuksh, (1874) 15 Bom L.R. 57*, a registered agreement between a husband and his wife to pay his earnings to her is a valid contract, as it is in writing, is registered, is between parties standing in near relation, and is for love and affection.

However, according to the case *Rajlucky Deb v. Bhootnath (1900) 4 C.W.N. 488*, where a husband by a registered document, after referring to quarrels and disagreement between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence, it was held that the promise was unenforceable, as it was not made for love and affection.

In accordance with the above cases and provision, it can be said that an agreement that is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other, is a valid contract in the given situation.

However, in the second situation, where a husband by a registered document, after referring to quarrels and disagreement between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence, the promise is unenforceable.

**OR (Alternate question to Q. No. 6)****Answer 6A(i)**

The Court shall apply the rule of construction that 'general provisions yield to special provisions'. It is the duty of the Court to avoid that and, whenever it is possible to do so, the construe provisions which appear to conflict so that they harmonize. Provisions of one Section of a statute cannot be used to defeat those of another unless it is impossible to effect re-conciliation.

This principle is also expressed in the Latin maxim *Generalia specialibus non derogant* (also known as the rule of implied exception) meaning general things do not derogate from special things; things general do not restrict or detract from things special; universal things do not detract from specific things. This well-known proposition of law says that when a matter falls under any specific provision, then it must be governed by that provision and not by the general provision. The general provisions must admit to the specific provisions of law.

### Answer 6A(ii)

The courts in India control the exercise of administrative discretion, which can be grouped under two broad heads:

1. Authority has not exercised its discretion properly- 'abuse of discretion'.
2. Authority is deemed not to have exercised its discretion at all- 'non-application of mind'.

### Abuse of Discretion

- (i) **Mala fides:** it means dishonest intention or corrupt motive. If the discretionary power exercised by authority with bad faith or dishonest intention, the action is quashed by the court. The intention may be to promote another public interest or private interest.
- (ii) **Irrelevant considerations:** if the administrative authority takes into account factors, circumstances or events wholly irrelevant or extraneous to the purpose mentioned in the statute, then administrative action is vitiated / likely to be quashed by the courts.
- (iii) **Leaving out relevant considerations:** The administrative authority who is required to take into account all the relevant facts, if leaves relevant consideration, its action will be invalid.
- (iv) **Arbitrary orders:** The order made should be based on facts and cogent reasoning and not on the whims and fancies of the adjudicatory authority.
- (v) **Improper purpose:** The discretionary power is required to be used for the purpose for which it has been given. If it is given for one purpose and used for another purpose it will amount to abuse of power.
- (vi) **Colourable exercise of power:** Where the discretionary power is exercised by the authority on which it has been conferred ostensibly for the purpose for which it has been given but in reality for some other purpose, it is taken as colourable exercise of the discretionary power and it is declared invalid.
- (vii) **Non-compliance with procedural requirements and principles of natural justice:** If the procedural requirement laid down in the statute is mandatory and it is not complied, the exercise of power will be bad. Whether the procedural requirement is mandatory or directory is decided by the court. Principles of natural justice are also required to be observed.
- (viii) **Exceeding jurisdiction:** The authority is required to exercise the power within the limits of the statute. Consequently, if the authority exceeds this limit, its action will be held to be ultra vires and, therefore, void.

### Non-application of mind

- (i) **Acting under dictation:** Where the authority exercises its discretionary power under the instructions/dictation from superior authority, in such condition in substance the power is not exercised by it but by the other authority. Such decision or action is bad.

- (ii) **Self-restriction:** The authority entrusted with discretionary power is required to exercise it after considering the individual cases and should not impose fetters on it discretion by adopting fixed rule of policy to be applied rigidly to all cases coming before it. Such decision or action will be bad.
- (iii) **Acting mechanically and without due care:** It will render the decision bad in law.

#### Answer 6A(iii)

The essentials of customs to be lawfully valid and binding are:

- (i) **Immemorial (Antiquity):** A custom to be valid must be proved to be immemorial; it must be ancient.
- (ii) **Certainty:** The custom must be certain and definite, and must not be vague and ambiguous.
- (iii) **Reasonableness:** A custom must be reasonable. It must be useful and convenient to the society. A custom is unreasonable if it is opposed to the principles of justice, equity and good conscience.
- (iv) **Compulsory Observance:** A custom to be valid must have been continuously observed without any interruption from times immemorial and it must have been regarded by those affected by it as an obligatory or binding rule of conduct.
- (v) **Conformity with Law and Public Morality:** A custom must not be opposed to morality or public policy nor must it conflict with statute law. If a custom is expressly forbidden by legislation and abrogated by a statute, it is inapplicable.
- (vi) **Unanimity of Opinion:** The custom must be general or universal. If practice is left to individual choice, it cannot be termed as custom.
- (vii) **Peaceable Enjoyment:** The custom must have been enjoyed peaceably without any dispute in a law court or otherwise.
- (viii) **Consistency:** There must be consistency among the customs. Custom must not come into conflict with the other established customs.

#### Answer 6A(iv)

Rule 6 of Order VIII of Code of Civil Procedure, 1908 deals with set-off which is a reciprocal acquittal of debts between the plaintiff and defendant. It has the effect of extinguishing the plaintiff's claim to the extent of the amount claimed by the defendant as a counter claim.

In the case of *Jitendra Kumar Khan and Ors. vs. The Peerless General Finance and Investment Company Limited and Ors. (07.08.2013 - SC) : 2013 ALL SCR 3259*, it has been decided that Equitable set-off is different than the legal set-off; that it is independent of the provisions of the Code of Civil Procedure; that the mutual debts and credits or cross-demands must have arisen out of the same transaction or to be connected in the nature and circumstances; that such a plea is raised not as a matter of right; and that it is the discretion of the court to entertain and allow such a plea or not.

In view of the above discussion, it can be said that in India distinction between Legal and Equitable set-off is recognised.

## COMPANY LAW & PRACTICE

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

**NOTE :** Answer ALL Questions.

### PART I

#### Question 1

Case Study :

Anil, Sunil and Vaishali are close friends from a renowned business family. After doing their masters from IIM, Ahmadabad they decided to start e-commerce in commodities. However, they were not sure about the legal format in which they should start the business. On request, M/s AB & Associates, a firm of practicing Company Secretaries advised them to form a company limited by shares being the best suitable device for running the business. After complying with the legal formalities, the company in the name and style of "Dynamic E-Commerce Ltd." (hereinafter referred to as "the Company") was incorporated on 1st April, 2020 by seven subscribers (including Anil, Sunil and Vaishali) to the Memorandum and Articles of Association of the Company with the main object of carrying e-commerce in grains, grocery, and medicines throughout India.

The registered office of the company is situated in Pune, the State of Maharashtra (India).

The capital clause of the Memorandum of Association (MOA) provides as under :

"The authorised share capital of the company shall be ₹1,00,00,000"

The Articles of Association (AOA) contain the capital clause as below :

"The authorised share capital of the company shall be ₹1,00,00,000 divided into 8,00,000 equity shares, carrying voting rights pari-passu of ₹10 each and 20,000 preference shares of ₹10 each."

The company offered preference shares to the financial institution, its promoters, and a group of individuals on which rate of dividend shall be 10% as per the term of issue. The financial institution refused to subscribe to the issue of preference shares on the contention that MOA is ambiguous as it does not authorise the company to issue class of preference share and hence the act of offering preference shares is ultra vires the company.

Considering the growing business, the company wants to shift its registered office from Pune to Mumbai in the State of Maharashtra (India). The Managing Director of the company has been apprised by the Legal Officer that the company may shift its registered office, as proposed, by passing a unanimous board resolution and filing necessary forms with the Registrar of Companies.

*Encouraged with the financial results of last three years the Board of directors of the company intends to declare interim dividend for the first time in its next board meeting to be held on 31st May, 2023 out of the profit earned for the year 2022-23.*

*The balances extracted from the financial statement for the preceding year are as below :*

<i>Particulars</i>	<i>Financial Results for theyear ending 31st March, 2023 (₹ in lakh)</i>
<i>Net Profit for the year after depreciation but before interest and tax (NPBIT)</i>	<i>80.00</i>
<i>Charge of Interest on the profit on term loan</i>	<i>5.00</i>
<i>Fully Paid-up equity share capital</i>	<i>60.00</i>
<i>Fully Paid-up Preference share capital</i>	<i>16.00</i>
<i>Free Reserves</i>	<i>10.00</i>
<i>Term Loan</i>	<i>50.00</i>
<i>Contingent Liabilities for which profit is to be set aside</i>	<i>24.65</i>

*Assume Income-tax provision @ 25%*

*Based on the above facts answer the following :*

- Whether the contention of the financial institution in refusing to subscribe to the issue of preference shares of the company is valid ?*
- Referring to the provisions of the Companies Act, 2013 advise the company of the compliance requirement for shifting of its registered office from Pune to Mumbai.*
- Referring to the provisions of the Companies Act, 2013 read with Secretarial Standard-3 (SS-3) and requirement of the Board. Explain the meaning of "Divisible Profit" and can interim dividend be paid by the company out of free reserves, in the event of loss or inadequacy of profit during a financial year ?*

*(5 marks each)*

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

#### **Doctrine of Ultra vires:**

Any activity done contrary to or in excess of the scope of activity of the Companies Act, Memorandum of Association or Articles of Association will be ultra vires. Ultra vires activities can be divided into the following three divisions:

#### **Ultra Vires the Companies Act:**

Any act done contrary to or in excess of the scope of activity of the Companies Act

will be ultra vires the Companies Act. Such an act is void and cannot be ratified even by unanimous resolution of all the shareholders. Further, a provision contained in the memorandum, articles, agreement, or resolution shall be void if it's repugnant to any of the provisions in the Act.

***Ultra Vires the Memorandum of Association:***

In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires. As a result, an act which is *ultra vires* is void, and does not bind the company. Neither the company nor the contracting party can sue on it. Such an act is void and cannot be ratified even by unanimous resolution of all the shareholders.

***Ultra Vires the Articles of Association:***

If the acts of a company are *ultra vires* the Articles of Association but *intra vires* the memorandum of association (i.e., outside the scope of articles but within the powers conferred by the memorandum), it will be ultra vires the Articles of Association. These acts are also void, but the company in general meeting may alter the Articles by a special resolution and ratify the unauthorized acts.

***Validity of contention of the bank:***

In *Re. South Durham Brewery Company [(1875) LR 7 HL 65c]*, the MOA of the company was unclear as to the classes of shares to be issued by it, but the AOA of the company gave power to issue shares of different classes as described therein. The Hon'ble Court held that Articles can be used to explain the ambiguity contained in the memorandum. *"... their Lordships agree that in such cases the two documents must be read together at all events so far as may be necessary to explain any ambiguity appearing in the terms of the memorandum, or to supplement it upon any matter as to which it is silent."*

Hence, the act of offering the preference shares is not ultra vires the Companies Act, the MOA or AOA of the company and the contention of the bank to refuse it is not valid in light of the explanation and case law cited above.

**Answer 1(b)**

In the instant case the change in registered office of the company shall be within the same state but from the jurisdiction of ROC, Pune to the jurisdiction of ROC, Mumbai.

As per section 12(5) of the Companies Act, 2013 read with rule 28 of the Companies (Incorporation) Rules, 2014, no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company. {Proviso to Section 12(5)}

Thereafter, the Regional Director shall examine the application and the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of application complete in all respects. The certified copy of order of the Regional Director, approving the alternation of memorandum for transfer of registered office company within the same State, shall be filed in Form No. INC-28 along with fee with the Registrar of State within thirty days from the date of receipt of certified copy of the order.

Under rule 28 of the Companies (Incorporation) Rules 2014, application shall be made to the Regional Director in Form No.INC.23 along with the fee and following documents shall be furnished:

- (a) Board Resolution for shifting of registered office;
- (b) Special Resolution of the members of the company approving the shifting of registered office;
- (c) a declaration given by the Key Managerial Personnel or any two directors authorized by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof;
- (d) a declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending;
- (e) acknowledged copy of intimation to the Chief Secretary of the state as to the proposed shifting and that the employees' interest is not adversely affected consequent to proposed shifting.

Accordingly, the company may shift its registered office from Pune to Mumbai only after passing Board resolution and a special resolution in the general meeting, obtaining confirmation order of the Regional Director and complying with the other procedural requirements. Hence, the advice of the legal officer is not correct.

As per rule 12(6) the confirmation referred to in sub-section (5) shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company and the company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.

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

'Divisible profits' means the profits which the law allows the company to distribute to the shareholders by way of dividend. According to Palmer's Company Law, the terms 'divisible profits' and 'profits in the legal sense' are synonymous. Thus, the profits of a business mean the net proceeds of the concern after deducting the necessary outgoings without which those proceeds could not be earned. [*Bharat Insurance Co. Ltd. v. CIT (1931) 1 Com Cases 192, 196 (Lah)*].

Divisible profits are that portion of the profit which can be distributed legally among the shareholders of the company. These profits are distributed by way of dividends, but only after provisions for past losses and reserves have been made.

### **Interim Dividend**

As per Section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

It is also provided in Article 81 of table F that Subject to the provisions of section 123, the Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company.

Therefore, before approving payment of interim dividend, the directors should satisfy themselves that the profit is available for distribution by way of dividend.

SS-3 provides that in the event of a loss or inadequacy of profits during a financial year, no Interim Dividend shall be declared/ paid out of Free Reserves. Hence, in this case interim dividend cannot be declared by the Board of directors.

## Question 2

(a) *The recognised trade union of Water Purifier Ltd. made an application before the Tribunal seeking order for investigation of the company on the ground that the company has defaulted the payment of dues of the workmen since long and the business of the company is being conducted otherwise for a fraudulent or unlawful purpose. In response, the company objected to the application and claimed that the recognised trade union not being the members or creditors of the company has no locus standi to make such application and is liable for dismissal. Examine the admissibility of the application of recognised trade union submitted before the Tribunal seeking investigation of the company.*

(3 marks)

(b) *AB Pvt. Ltd. is unlisted material subsidiary of HD Ltd. which is a listed entity. It is the strong conviction of the Company Secretary of HD Ltd. that secretarial audit for AB Pvt. Ltd. is not required for two reasons such that it is a private company and secondly an unlisted company. Based on the information and input data provided above, referring to the provisions of the Companies Act, 2013 you are requested to examine/analyse and answer the following : Explaining the requirement and timeline for submission of secretarial compliance report by a listed entity, state whether the Secretarial Audit of AB Pvt. Ltd. is voluntary in light of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ? Also, explain the meaning of material subsidiary.*

(3 marks)

(c) *Edge Ltd. had borrowed ₹50 crore from a scheduled bank and repaid entire loan amount along with interest thereon. The company wants to file satisfaction of charge with the Registrar only after receiving no due certificate and a release letter from the bank. If company delays the filing of satisfaction of charge for the default of bank in not issuing these documents, whether the company will be liable for late filing of satisfaction of charge under the Companies Act, 2013?*

(3 marks)

(d) *Mithi Sugar Limited has on its Board, four directors viz A, B, C and D. In addition, the company has Mr. R as the Managing Director. The company also has a full time Company Secretary, Mr. Anupam, on its rolls. The financial statements of the company for the year ended 31st March, 2023 were authenticated by two of the directors, Mr. A and Mr. B under their signatures. Referring to the provisions of the Companies Act, 2023 :*

(i) *Examine the validity of the authentication of the Financial Statement including Balance Sheet and Statement of Profit & Loss etc. and the Boards Report.*  
(3 marks)

(ii) *What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Financial Statement including Balance Sheet and Statement of Profit & Loss and the Board's Report ?*

(3 marks)

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

As per section 213 of the Companies Act, 2013, the Tribunal may order after giving a reasonable opportunity of being heard to the parties concerned that affairs of a company ought to be investigated. The Tribunal may also make such order on an application made to it by any other person or otherwise, if it is satisfied that the circumstances suggest that the business of the company is being conducted with intent to defraud its creditors, members, or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose.

Hence, the Companies Act allows any other person to make an application before the Tribunal if the circumstances so suggest. The objection of the company shall not be tenable and the application of the recognized trade union shall be admissible for appropriate order of the Tribunal.

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

As per section 204(1) of the Companies Act, 2013, every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed. As per rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, for the purposes of section 204(1), the other class of companies shall be as under-

- a. Every public company having a paid-up share capital of fifty crore rupees or more; or
- b. Every public company having a turnover of two hundred fifty crore rupees or more; or
- c. Every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.

Further, as per Regulation 24A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [SEBI (LODR) Regulations], every listed entity and its

material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex a Secretarial Audit Report given by a Company Secretary in Practice, in such form as specified, with the annual report of the listed entity. Hence, secretarial audit for AB Pvt. Ltd, is compulsory and not voluntary.

Every listed entity shall submit a Secretarial Compliance Report in such form as specified, to stock exchanges, within sixty days from end of each financial year.

As per explanation to Regulation 24(1) of the SEBI (LODR) Regulation, 2015 "Material Subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed company and its subsidiaries in the immediately preceding accounting year.

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

Section 82 of the Companies Act, 2013 read with rule 8 of the Companies (Registration of charges) Rules, 2014:

Satisfaction of Charge is another important aspect relating to debts secured by a charge. In case of a full and complete payment of the secured charge registered with the Registrar, the company or charge-holder shall within a period of 30 days from the date of payment or satisfaction in full of any charge registered under Chapter VI of the Companies Act, 2013, give intimation of the same to the Registrar in Form No. CHG-4 along with the prescribed fees. The Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of such additional fees as may be prescribed.

On receipt of such intimation, the Registrar shall issue a notice to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar. If no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges maintained by the registrar under section 81 and shall inform the company, that he has done so. If the cause is shown to the Registrar, he shall record a note to that effect in the register of charges and shall inform the company accordingly.

However, the aforesaid notice shall not be sent, in case intimation to the Registrar is in specified form along with the Letter of the charge holder stating that the amount has been satisfied, which is a mandatory attachment in all cases of Form CHG -4 and is signed by the holder of charge [Proviso to Section 82(2)]

Hence, filing of satisfaction of charge after clearance of entire dues of the bank does not depend on obtaining no due certificate from the bank and in absence of which the Registrar will get it confirmed from the lending bank. Hence, Edge Ltd. should have filed the same within the time limit and the ROC would have obtained the confirmation thereto from the bank. The company may therefore file it with payment of additional fees for delayed filing of satisfaction of charge.

**Answer 2(d)(i)**

According to section 134(1) of the Companies Act, 2013 the financial statement, including Consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by:

- (a) The chairperson of the company where he is authorized by the Board; or
- (b) Two directors out of which one shall be managing director, if any; and
- (c) The Chief Executive Officer, the Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.

Further, section 134(6) of the Companies Act, 2013 provides that the Board's report and any annexures thereto shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

In given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. A and Mr. B, the directors. In view of the provisions of Section 134(1) of the Act, the Managing Director Mr. R should be one of the two signatories. Since, the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit & Loss Account. Boards Report is required to be signed by the chairperson of the company or by the two directors, one of whom shall be the managing director, in this case Mr. R being the managing director and any of other director (A or B or C or D) can sign the Board Report. Therefore, authentication done by two directors (i.e. Mr. A and Mr. B) is not valid.

**Answer 2(d)(ii)**

As per section 134(1) of the Companies Act, 2013, in case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon.

In the given case, the financial statements including Balance Sheet and Statement of Profit & Loss and Board's Report should be signed by one director and hence, the authentication is in order.

**Question 3**

- (a) *The period of 10 years is over from taking over X Ltd. (the transferor company) by Y Ltd. (the transferee company) by acquiring its shares and hence, a Board resolution has been passed by the transferee company in the meeting held in June, 2023 to destroy the books and papers (the record) of the transferor company considering the provisions relating to preservation of books of account of the company for 8 years. Referring to the provisions of the Companies Act, 2013, Decide the validity of the decision of the Board of the transferee company.*

(5 marks)

- (b) *Sanjay Diagnostic Limited (the Company) was registered in Bihar under the provisions of the Companies Act, 2013. Its future project is to diversify into other profitable business, which is unique and provide sustainable business growth. Due to the recession in the industry and excessive competition from the seasoned player, the Company has no significant accounting transaction and business activities during the last two financial years. However, the Company*

*has been regular in filing its financial statements and annual returns with the Registrar of Companies, Patna by making payment of applicable filing fees. The Company decided to file the application for obtaining the status of dormant company in line with the relevant provision of the Companies Act, 2013. The Company instead of passing a special resolution to this effect in the general meeting of the Company issued notice to all the shareholders of the Company for this purpose and obtained consent of 82% of shareholders in value. Referring the provisions of the Companies Act, 2013 and Rules made there under answer the following :*

- (i) Explain the term "Dormant Company".*
- (ii) Whether the payment of applicable filing fees to the Registrar of Companies (ROC) could be considered as significant accounting transaction under the Companies Act, 2013.*
- (iii) Whether the application made by Sanjay Diagnostic Limited is in order, in the absence of passing a special resolution ?*

*(5 marks)*

- (c) XYZ Ltd. is an eligible company and has accepted during the financial year ended 31st March, 2023 the following receipts :*

S.No.	Receipts
1.	<i>Amount received against issue of commercial paper</i>
2.	<i>Amount received from a person who, at the time of the receipt of the amount, was a director of the company and has furnished a written declaration that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.</i>
3.	<i>Amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit.</i>
4.	<i>Term deposits received from members for 2 years</i>
5.	<i>Deposits from public for 36 months.</i>

*Referring to the provisions of the Companies Act, 2013 you are requested to state, which of the above receipts will be considered as deposits and which of them will be reported in return DPT-3 by the company ?*

*(5 marks)*

### **Answer 3(a)**

As per Section 239 of the Companies Act, 2013, the books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter (Chapter XV Compromises, Arrangements and Amalgamations) shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion

or formation, or' the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

Hence, the decision of the Board of directors of Y Ltd. is not valid. For disposal of record of the transferor company the transferee company should obtain the prior permission of the Central Government to be granted after following the procedure laid down under section 239 explained above.

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

- (i) As per Section 455 (1) of the Companies Act, 2013, where a company formed and registered under the Companies Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

According to Explanation (i) to Section 455 of the Companies Act, 2013, "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

- (ii) Explanation (ii) to Section 455 of the Companies Act, 2013 states, "significant accounting transaction" means any transaction other than:
- payment of fees by a Company to the Registrar;
  - payments made by it to fulfil the requirements of this Act or any other law;
  - allotment of shares to fulfil the requirements of this Act; and
  - payments for maintenance of its office and records.

Therefore, according to the Explanation (ii) to Section 455 of the Companies Act, 2013, payment of applicable filing fees by a Company to the Registrar of Companies cannot be considered as significant accounting transaction.

- (iii) According to Rule 3 of the Companies (Miscellaneous) Rules, 2014, a Company may make an application in prescribed form MSC-1 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 of the Companies Act, 2013 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).

Thus, application made by Sanjay Diagnostic Limited is in order, as a notice is issued to all the shareholders of the Company for this purpose and it has obtained consent of 82% of shareholders in value which fulfills the requirement of at least 3/4th shareholders (in value).

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

Section 2(31) of the Companies Act, 2013 read with Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014, 'deposit' includes any receipt of money by way of

deposit or loan or in any other form by a company, but does not include the receipts specified under the Rules.

The receipts under Serial No. 1, 2 and 3 will fall in the exempted category and shall not be considered as deposits.

The other 2 receipts at Serial No. 4 and 5 will constitute the deposits.

Rule 16 of the Companies (Acceptance of Deposits) Rules, 2014, states that every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in the Companies (Registration Offices and Fees).

*Explanation* - It is hereby clarified that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.

Considering the explanation read with Form DPT-3, XYZ Ltd. is required to report all transactions at Serial No. 1 to 5 in Form DPT-3 whether considered as deposit or not.

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

**Question 4**

(a) *Mr. Ranjan is an employee of the company Moon Limited and investigation is going on him under the provisions of the Companies Act, 2013. The company wants to terminate the employee on the ground of the investigation going against him. They have filed the application to tribunal for approval of termination. The Company has not received any reply from the tribunal within 30 days of filing an application. The Company consider it as a deemed approval and terminated Mr. Ranjan.*

- (i) *Is the contention of company being valid in law ?*
- (ii) *What is remedy available to Mr. Ranjan ?*
- (iii) *What is remedy available to Mr. Ranjan, if reply of Tribunal has been received within 30 days of application ?*

(5 marks)

(b) *Ankur Steel Limited is a manufacturer of stainless steel. It had raised ₹400 crores through public issue of its equity shares for starting one more unit of steel manufacturing in Odisha. It has utilized ₹100 crores. Due to reduction in customs duty on import of steel, imported steel from China are cheaper than its own manufacturing. Since there is no scope for growth and expansion in the existing business, management of the Company thought of utilizing remaining amount in software development business (including Artificial Intelligence) by adding a new object in the Company's its mernorandum of association.*

*As per the provisions of the Companies Act, 2013 can it do so ? If no, what advise will you give to the company ? If yes, then explain the various steps to be followed by the company.*

(5 marks)

(c) *Analyse the eligibility of a minor to become member of the company and other issues incidental thereto in the following scenarios :*

- (i) *Minor becoming member by agreement signed by him*

- (ii) *Minor becoming member by allotment or transfer of fully paid-up shares through guardian*
- (iii) *Minor becoming member by transfer of partly paid-up shares and liability of future calls thereon*
- (iv) *Restoration of dividend to the company, if he repudiates the agreement of membership on attaining majority.*

(5 marks)

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

**Question 4A**

- (a) *“In a company limited by shares all members will ordinarily be the shareholders but all shareholders need not be the members, ipso facto.” Differentiate between ‘members’ and ‘shareholders’ considering the provisions of the Companies Act, 2013*
- (b) *Provide various grounds on which the investigation is assigned to Serious Fraud Investigation Office (SFIO) ?*
- (c) *Anil, Sunil and Sunita are proposed to be first directors in the Articles of Association of the proposed company. However, as they do not have DIN would not be able to assume office of director immediately on incorporation of the company. Is there any way out available to obtain DIN simultaneously with incorporation of the company so that the company, on incorporation, will meet the requirement of having minimum number of directors ? Advice, referring to the provisions of the Companies Act, 2013.*

(5 marks each)

**Answer 4(a)**

Section 218 of the Companies Act, 2013 states that the company shall require to take approval of the Tribunal before taking action against the employee, if there is any pendency of any proceedings against any person concerned in the conduct and management of the affairs of the company.

The company shall require approval in the following circumstances:

- discharge or suspension of an employee; or
- punishment to an employee by dismissal, removal, reduction in rank or otherwise;  
or
- change in the terms of employment to the disadvantage of employee;

The Tribunal shall notify its objection to the action proposed in writing.

In case, the company, other body corporate or person concerned does not receive the approval of the Tribunal within 30 days of making the application, it may proceed to take the action proposed against the employee.

In case the company, other body corporate or person concerned is dissatisfied with

the objection raised by the Tribunal, it may, within a period of 30 days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of prescribed fees.

The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

In view of the above provision of the Companies Act, 2013:

- i. Yes, the termination of Mr. Ranjan made by Moon Limited (the company) is valid in law and the company can do so as no approval from the Tribunal has been received within 30 days of making the application.
- ii. In this scenario, Mr. Ranjan has no remedy available. As per the provision of the law appeal to the Appellate Tribunal can be made only if the person is dissatisfied with the objection raised by the Tribunal. In this case the Tribunal has not replied, hence Mr. Ranjan cannot prefer an appeal to the Appellate Tribunal.
- iii. In this case, Mr. Ranjan can prefer an appeal to the Appellate Tribunal within 30 days of receiving letter of objection raised by the Tribunal and with payment of prescribed fee.

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

According to Section 13(8) of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and —

- i. The details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change.
- ii. The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.

As per section 13(9), the Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with section 13(6)(a).

Therefore, the company will have to file copy of special resolution with ROC and ROC will certify the registration within a period of thirty days. As per section 13(10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

Thus, keeping in view the above provisions, yes, the company can add the object of software development business in its memorandum and utilize the available funds for the new business. However, it will have to comply with above requirements.

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

- i. A member who is a minor is wholly incompetent to enter into a contract/agreement

and as such cannot become a member of a company. Consequently, an agreement by a minor to take shares is void *ab-initio*.

- ii. An agreement in writing for a minor to become a member may be signed on behalf of the minor by his lawful guardian and the registration of transfer of shares in the name of the minor, acting through his or her guardian, especially where the shares are fully paid cannot be refused on the ground of the transferee being a minor [*Miss Nandita Jain v. Benett Coleman and Co. Ltd., Appeal No. 27 of 1972 dated 17.2.78*].
- iii. If shares are transferred to a minor, the transferor will remain liable for all future calls on such shares so long as they are held by the minor even if the transferor was ignorant of his minority.
- iv. In this case, a minor is not required to restore the dividend received by him during his minority and the company cannot invoke the doctrine of estoppel against him. [*Sadiq Ali v. Jai Kishori, (1928) 30 Bom. L.R. 1346*].

#### Answer 4A(a)

#### Difference between the Member and the Shareholder

Sr.No.	Member	Shareholder
1	Section 2(55) of the Companies Act, 2013 specifies the meaning of 'member'.	On the other hand, the meaning of 'shareholder' is not defined under the Companies Act, 2013
2	A shareholder becomes a member of a company, once his name is entered into the company's register of members or if he is a subscriber to the incorporation of the company. Every other person who agrees in writing to become a member of the company and whose name is entered in its register of members shall, be a member of the company.	The person who has ownership of shares of a company is known as shareholder. Further, companies limited by guarantee do not have a share capital, and consequently, their members are not shareholders.
3	The subscribers to the Memorandum of a company who shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members. The person who signs the memorandum of association with the company becomes a member.	After signing the memorandum, a person may become shareholder only when the shares are allotted to him.
4	The bearer of a share warrant is not a Member.	Whereas, the holder of a share warrant is a Shareholder.

- 5      A member who has transferred his shares, though he does not hold any shares yet he continues to be member of the company until the transfer is registered and his name is removed from the register of members maintained by the company.
- Similarly, A person may be a holder of share by transfer but will not become its member until the transfer is registered in the books of the company in his favour and his name is entered in the register of members.

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**Answer 4A(b)**

As per section 212 of the Companies Act, 2013, the Central Government may assign the investigation into affairs of a company to the Serious Frauds Investigation Office (SFIO) on the basis of an opinion formed from the following:

- The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support. The Central Government on receipt of such report can order an investigation under Serious Frauds Investigation Office;
- On intimation of a special resolution passed by a company that its affairs ought to be investigated;
- In the public interest;
- On request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

**Answer 4A(c)**

As per rule 38 of the Companies (Incorporation Rules), 2014, the application for allotment of Director Identification Number upto three Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed for One Person Company, private company, public company and a company falling under section 8 of the Act. Shall be filed in SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus:INC-32) with the Registrar, within whose jurisdiction the registered office of the company is proposed to be situated. Any person (not having approved DIN) proposed to become a first director in a new company shall have to make an application through web form SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) for allotment of DIN.

For the purposes of filing SPICe Form, the particulars of maximum of three directors shall be allowed to be filled in SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32), and allotment of Director Identification Number of maximum

of three proposed directors shall be permitted in SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32) in case of proposed directors not having approved Director Identification Number.

The applicant is required to attach the proof of Identity, address, specimen signature duly verified. etc. along with the application. DIN would be allocated to User only after approval of the form. [Section 153 read with rule 9 of the Companies (Appointment and Qualification of Directors) Rules, 2014].

Once the SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) is processed and found complete, company would be registered and CIN would be allocated. Also DINs gets issued to the proposed Directors who do not have a valid DIN.

Thus, with this facility Anil, Sunil and Sunita may obtain DIN simultaneously with the process of incorporation of the company and can assume the office of directorship immediately on incorporation of the company and meet the requirement of having minimum number of directors.

## PART II

### Question 5

#### **Facts of the Case :**

*ABC Limited was incorporated on 14th October 2020 with the objective of manufacturing of Cement. The plant was commissioned in April 2021, at a cost of ₹ 580 Crores at Somnath, Gujarat. The Company was promoted by Chahal group. It is important to note that at present, ABC Limited is not a listed Company.*

*Over a period of time, ABC Limited has grown to become one of India's largest manufacturers and exporters of cement and having 800 members. The Quorum fixed by the Articles of ABC Limited was 7 members present.*

*In line with its long-term vision, the company has diversified into Home Textiles, Cotton Yarn, Industrial/Edible Salt and Lignite Mining.*

*The current composition of the Board of Directors of ABC Limited is as follows :*

- *Total number of directors : 10*
- *Independent Directors : 5 (including one woman director)*
- *Whole-Time Directors : 3 (including Managing Director, Executive Director - Finance, and Executive Director - Operations)*
- *Non-Executive Promoter Directors : 2 (1 Chairman and 1 Vice Chairman).*

*The Board approved Notice to call 1st Annual General Meeting on 24th December 2021 at 2.30 P.M. (IST) to approve several resolutions including adoption of audited financial statements of the Company for the financial year ended March 31, 2021; approval regarding appointment of directors etc. Record Date/Cut-off date for said AGM was fixed on 17th December 2021.*

*Notice of the AGM contains Notes related to Proxy, which is reproduced as under :*

*A MEMBER ENTITLED TO ATTEND AND VOTE AT THE MEETING IS ENTITLED TO APPOINT A PROXY TO ATTEND AND VOTE INSTEAD OF HIMSELF. A PROXY NEED NOT BE A MEMBER. PROXIES IN ORDER TO BE EFFECTIVE MUST BE DEPOSITED AT THE REGISTERED OFFICE OF THE COMPANY NOT LESS THAN FORTY EIGHT HOURS BEFORE THE COMMENCEMENT OF THE MEETING. A PROXY FORM IS ENCLOSED WITH THIS NOTICE.*

*Based on the above facts of the case study answer the following questions :*

(a) *ABC Limited issued a notice on 1st December, 2021 to hold its 1st Annual General Meeting (AGM) on 24th December, 2021. Check the validity of the notice referring to the provisions of the relevant act and secretarial standards in case it is sent by post.*

*(5 marks)*

(b) *Based on the above integrated case and after considering following details of the persons present in the general meeting of ABC Limited, check whether the quorum of the Annual General Meeting is validly constituted or not.*

*(i) Mr. A, the representative of Governor of Gujarat.*

*(ii) Mr. B & Mr. C are preference shareholders.*

*(iii) Mr. D representing PQR Ltd. And XYZ Ltd.*

*(iv) Mr. E, Mr. F, Mr. G and Mr. H are proxies of shareholders*

*(5 marks)*

(c) *Mr. S, a shareholder of ABC Limited, issued two Proxies in respect of the shares held by him in favour of Mr. 'X' and Mr. 'Y'. The proxy in favour of 'X' was lodged on 22nd December 2021 at 10.00 A.M. and the one in favour of Mr. Y was lodged on 23rd December 2021 at 3.30 P.M. The company rejected both the proxies in favour of Mr. X as well as Mr. Y. Based on the integrated case and after considering above mentioned details regarding proxies, is the rejection by the company in order ? Your answer should be based on the applicable provisions of the Companies Act, 2013 and Secretarial Standards. You are also requested to write the provisions related to inspection of proxies.*

*(5 marks)*

(d) *At a General meeting of the company, a matter was to be passed by a special resolution. Out of 400 members present, 200 members voted in favour of the resolution, 50 members voted against it and 50 members' votes were found invalid. The remaining 100 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act. 2013, examine the validity of the Chairman's declaration?*

*(5 marks)*

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

As per section 101(1) of the Companies Act, 2013, a general meeting may be called by giving not less than 21 clear days' notice in writing or through electronic mode in such manner as may be prescribed. As provided in para 1.2.6 of secretarial standard-2 (SS-2), for the purpose of reckoning 21 days clear notice, the day of sending the notice and the

day of Meeting shall not be counted. Further, in case the company sends the notice by post or courier, additional two days shall be provided for the service of notice.

Date of holding AGM: 24th December 2021;

Date of dispatch of notice: 1st December 2021;

Days to be excluded:

- (a) Day of holding AGM i.e., 24th December 2021.
- (b) Day of dispatch of notice i.e., 1st December 2021.
- (c) 2 additional days for service of notice i.e., 2nd & 3rd December 2021 (SS-2 Para 1.2.6)

Number of days' notice given: 20 days (i.e., from 4th December 2021 to 23rd December 2021), which is short by 1 day.

Number of days' notice required under section 101 of the Act is 21 clear days. Therefore, it is not a case of valid notice.

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

- i. Since Mr. A is the representative of the Governor of Maharashtra, shall be treated as a member personally presents (Section 112).
- ii. Preference shareholders can vote only in relation to such matters which directly affect their rights. (Section 47)

In this case, meeting was called to take decision on approval of financial statements and appointment of Directors, which does not affect their rights. Therefore, Mr. B & Mr. C cannot be counted for the purposes of quorum, though they may be personally present.

Since Mr. D represents two body corporates, he would be treated as two members personally present. (Section 113)

- iii. Since Mr. E, Mr. F, Mr. G and Mr. H are proxies of shareholders and members are not personally present. They are not considered while counting quorum. (Section 105)

As per the section 103 (1) of the Companies Act, 2013, unless the articles of the company provide for a larger number,—

- (a) in case of a public company,—
  - (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.

From the above analysis, it can be concluded that only 3 members are personally present and the Quorum fixed by the Articles of ABC Ltd was 7 members present, so they do not constitute proper quorum.

**Answer 5(c)**

Section 105 of the Companies Act, 2013 provides that a member, who is entitled to attend and to vote, can appoint another person as a proxy to attend and vote at the meeting on his behalf. As per Section 105 of the Companies Act, 2013 and Para 6.6.1 of SS-2, a proxy should be deposited 48 hours before the time of the meeting.

The SS-2 (Secretarial standard-2) also states that where allowed, a member can appoint one or more proxies, to attend and vote instead of himself and a proxy need not be a member. If a Company receives multiple Proxies for the same holdings of a Member, the Proxy which is dated last shall be considered valid.

In the given case, the proxies should have, therefore, been deposited on or before 22nd December 2021 latest by 2.30 P.M. (the date of the meeting being 24th December 2021, at 2.30 P.M.). Proxy in favour of Mr. Y was deposited on 23rd December 2021 at 3.30 P.M. Therefore, proxy in favour of Mr. Y has become invalid, being less than 48 hours before the time of the meeting.

Thus, rejecting the proxy in favour of Mr. X is unsustainable; because proxy in favour of Mr. X is valid since it was deposited in time (i.e. on 22nd December 2021 at 10.00 A.M.).

*Inspection of proxy:*

As per section 105(8) of the Companies Act, 2013, every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, is entitled to inspect the proxies lodged with the company, if at least 3 days' notice in writing is given to the company. Such notice shall be received at least three days before the commencement of the Meeting.

As per para 6.8.2 of the SS-2, proxies shall be made available for inspection during the period beginning twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting. Every Member entitled to vote on any Resolution at a General Meeting is entitled to inspect the proxies lodged with the company. The inspection should be allowed during the period starting twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting. Inspection shall be allowed between 9 a.m. and 6 p.m. during such period.

**Answer 5(d)**

Section 114 of the Companies Act, 2013 deals with Ordinary and Special Resolution.

As per Section 114(2) of the Companies Act, 2013, a resolution shall be a special resolution when:

- (a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) the notice required under this Act has been duly given; and

- (c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

The method of voting might be through show of hands, electronic voting, poll or any other permitted method or postal ballot. The number of votes of only the members who are entitled and voting are to be counted. Hence, the persons who abstain from voting or are not allowed to vote (whether under the provisions of this Act or otherwise) are not to be counted. Further, the notice required to be given may be given either by the company or the member proposing the resolution.

In the given case, 200 members voted in favour of the resolution, and 50 members voted against it. Invalid votes and person abstained from voting shall not be counted.

So, total valid votes : 250

Votes in favour : 200

Votes against : 50

Voting percentage in favour = 80% (i.e.  $200/250 \times 100$ ), which is more than 75% and validly passed.

Hence, declaration by the Chairman of the meeting is valid.

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

**Question 6**

- (a) *PQR Limited wants to constitute an Audit Committee in the ensuing Board meeting of the Company. Pursuant to the applicable provisions of the Companies Act, 2013, draft a board resolution covering the following matters :*

- (i) *Member of the Audit Committee*
- (ii) *Chairman of the Audit Committee*
- (iii) *Quorum for a meeting of the Audit Committee*
- (iv) *Any 2 functions of the said Committee.*

(5 marks)

- (b) *SNS Limited is expanding its business in UAE and to look after the business affairs abroad proposes to appoint Vikram as an additional director. He is M. Tech and had done his executive MBA from IIM, Bangalore and has a working experience in corporate sector at a top-management level. Since the next Board meeting is not likely to be held early it is proposed to appoint him as an additional director by obtaining a board approval through resolution by circulation. You are, being a company secretary of the company, requested to draft a resolution by circulation along with brief note thereon for consideration and approval of the directors in compliance with the provisions of the Companies Act, 2013.*

(5 marks)

(c) *Priya Garments Limited (the company) having its registered office at Hyderabad (India) has received, in accordance with the provisions of section 115 of the Act, a special notice from Revati, a member holding 50,000 equity shares aggregating to 5% of shareholding of the Company's voting capital for removal of Srinivasan, a director of the company being indulged in the fraudulent activities detrimental to the interest of the company. Accepting the requisition, the Board of directors, passed a resolution at its meeting held on 30th November, 2023 to convene an extra-ordinary general meeting of the company on Saturday, the 30th December, 2023 at 10 a.m. at the registered office of the company at Hyderabad for removal of Srinivasan on requisition of the member. You being a Company Secretary of the company is requested to prepare a draft notice of extra-ordinary general meeting to be issued on 1st December, 2023 along with explanatory note for removal of Srinivasan on requisition of the member as required under the Companies Act, 2013.*

(5 marks)

(d) *You are the Company Secretary of Himachal Chemicals Limited. Pursuant to the applicable provisions of the Companies Act, 2013, draft a board resolution to approve and adopt a new CSR Policy of the Company.*

(5 marks)

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

**Question 6A**

(i) *Referring to the provisions of the Companies Act, 2013 read with SS-1 explain, whether the board meeting can be convened at a shorter notice and what are the conditions subject to which such meeting may be held? When shall the decision of the Board taken at the meeting called at a shorter notice come into effect, if the company does not have an independent director? Also, state the venue for the Board meeting, if conducted through video conferencing/ audio-video means where directors participated from the different places/cities.*

(5 marks)

(ii) *JK Scooters Ltd. is a listed company and wants to appoint a small shareholders' directors suo motu. You are being a Company Secretary of the company apprise the managing director on the following points, referring to the provisions of the Companies Act, 2013.*

(a) *Is it mandatory for a listed company to appoint small shareholders' director with or without receiving a notice from requisite number of such shareholders?*

(b) *Tenure of office and retiring by rotation?*

(c) *Number of small shareholders' directorship.*

(d) *Small shareholders' director to be an independent director.*

(5 marks)

Financial information for Questions 6A(iii) & 6A(iv) :

You are CFO of GCL Textiles Limited. The last three years' Balance Sheet of GCL Textiles Limited contains the following financial information and figures:

(All amount in ₹)

	As at 31.03.2021	As at 31.03.2021	As at 31.03.2021
Paid up capital	25,00,000	25,00,000	37,50,000
General Reserve	20,00,000	21,25,000	25,00,000
Credit Balance in Profit & Loss account	2,50,000	3,75,000	5,00,000
Debenture Redemption Reserve	7,50,000	10,00,000	12,50,000
Securities Premium	1,00,000	1,00,000	1,00,000
Secured Loans	5,00,000	7,50,000	15,00,000

On going through other records of the Company, the following is also determined:

Net profit for the year(as  
calculated in accordance with  
the provisions of the Companies  
Act, 2013)

6,25,000	9,50,000	17,25,000
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In the ensuing Board Meeting of GCL Textiles Limited scheduled to be held on 15th October 2023, among other items of agenda, following items are also appearing :

- (a) To decide about borrowing from Banks/Financial institutions on long-term basis.
- (b) To decide about contributions to be made to charitable funds.

Based on above information, you are required to find out as per the provisions of the Companies Act, 2013, the following :

- (iii) Amount upto which the Board of Directors of GCL Textiles Limited can borrow from Banks/Financial institution without seeking the approval of members in general meeting; and

(5 marks)

- (iv) The amount upto which the Board of Directors of GCL Textiles Limited can contribute to Charitable funds during the financial year 2023-24 without seeking the approval of members in general meeting.

(5 marks)

### Answer 6(a)

“RESOLVED THAT pursuant to Section 177 of the Companies Act, 2013 an Audit Committee consisting of the following Directors, who are financially literate, be and is hereby constituted:

- (1) Mr—Independent Director

- (2) Mr—Independent Director
- (3) Mr—Independent Director
- (4) Mr—Independent Director
- (5) Mr—Managing Director
- (6) Mr—Chief Financial officer

“RESOLVED FURTHER THAT Mr. ....(DIN), an Independent Director of the Company, having accounting and / or related financial management expertise, be an is hereby appointed as Chairman of the Audit Committee, and he shall preside the meeting of the Audit Committee from time to time, and as per SS - 2 read with other applicable provisions of the Companies Act, 2013, the Chairman of the audit committee shall be present at Annual general meeting of the Company to answer shareholders’ queries.”

“RESOLVED FURTHER THAT the quorum for a meeting of the Audit Committee shall be three directors (other than the Managing Director), out of which at least two shall be independent directors”.

“RESOLVED FURTHER THAT the Audit Committee shall perform all the functions as laid down in section 177(4) of the Companies Act, 2013 including but not limited to:

- (a) Make the recommendation for appointment, remuneration and terms of appointment of the auditors of the company;
- (b) Revise and monitor the independence and performance of auditors of the company and the effectiveness of the audit process.”

“FURTHER RESOLVED THAT the Audit Committee shall review the quarterly and annual financial statements and submit the same to the Board with its recommendation”.

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

Resolution No. \_\_\_\_\_

Mr. .... (Director)

Dear Sir

#### **Resolution by Circulation**

The following Resolution is intended to be passed by circulation as per the provisions of Section 175 of the Companies Act, 2013. A note explaining the urgency and necessity for passing the said Resolution by circulation is enclosed.

“RESOLVED THAT pursuant to Section 161 of the Companies Act, 2013, and other applicable provisions, including any modification or re-enactment thereof and the provisions of the Articles of Association of the Company, Mr. Vikram (Name of Director), holding DIN: \_\_\_\_, be and is hereby appointed as an Additional Director on the Board of the Company, effective from\_\_\_\_\_.

RESOLVED FURTHER THAT Mr. Vikram shall hold office up to the date of the next Annual General Meeting (AGM) of the company or the last date on which the AGM should have been held, whichever is earlier.

RESOLVED FURTHER THAT (Name of the Authorized Director) (DIN) be and is hereby authorized to do all acts, deeds, matters and things as may be deemed necessary in connection therewith.”

None of the Directors are deemed to be concerned or interested in the Resolution.

\*Assent / Dissent / Require Meeting

(\*Strike off whichever is not applicable)

Place:

Date:

Signature

Name of Director(DIN)

**Brief note on the resolution by circulation for appointment of an additional director**

The company is expanding its business in UAE for which it needs a dynamic, young, qualified, and experienced person to head and look after the affairs of the business abroad.

Mr. Vikram has done his M.Tech from an esteemed institute of technology and after that Executive MBA from IIM, Bangalore. He has five years' experience of working in a corporate sector at the top management level and can shoulder the responsibilities for which the company is looking for.

He has provided required declaration that he is not disqualified to be appointed director of the company, his DIN and consent to act as an additional director, if appointed.

The Articles of the Company provides for appointment of additional director by the Board of directors.

He is recommended to be appointed additional director of the company with effect from date the resolution, by circulation, is passed by the majority of directors.

Since the next board meeting is not likely to be held early it is proposed to appoint him as such by obtaining the Board's approval through a resolution by circulation to meet the urgency. Hence, a draft circular resolution along with all supporting documents are attached herewith for information of the directors.

Kindly indicate your response to the aforesaid Resolution, by appending your signature and the date of signing in the space provided beneath the Resolution and return one copy to the undersigned or by e-mail at the address mentioned below so as to reach us on or before \_\_\_\_\_

All Directors are requested to return the resolution duly approved or otherwise and signed to that effect to the registered office of the company within a period of seven days.

For \_\_\_\_\_ (Name of Company)

Sd/-

Managing Director(DIN) / Company Secretary

e-mail id:

Address:

Contact No:

**Answer 6(c)****Notice of Extra Ordinary General Meeting**

NOTICE is hereby given that the Extra-Ordinary General Meeting of the members of Priya Garments Limited ("the Company") will be held on the requisition of Ms. Revati who holds in aggregate as on the date hereof 50,000 equity shares aggregating to 5% of shareholding of the Company's voting capital, on Saturday, the 30th December, 2023 at 10 a.m. at the registered office of the Company at \_\_\_\_\_, Hyderabad to transact the following business:

**SPECIAL BUSINESS:**

1. To consider and if thought fit, to pass, with or without modification(s), following resolution as Ordinary Resolution:

"RESOLVED THAT pursuant to Section 115 read with Section 169 of the Companies Act, 2013 and rules made thereunder, Mr. Srinivasan (DIN: ) be and is hereby removed from his office as director of the company with immediate effect."

RESOLVED FURTHER THAT, any Director of the Company and / or the Company Secretary, be and are hereby severally authorized to issue notice of extra-ordinary general meeting, file Form DIR- 12 with the Registrar of Companies and to do all such acts/deeds/things/ as may be deemed fit to give effect to this resolution."

By order of the Board of directors

For Priya Garments Limited

Sd-

Company Secretary

Place: Hyderabad

Date: .....

**NOTES:**

- (1) A member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself. The proxy need not be a member of the company.
- (2) Corporate members are requested to send a duly certified copy of the Board Resolution / Power of Attorney authorizing its representative to attend and vote on their behalf at an Extra-Ordinary General Meeting.
- (3) The proxies to be effective should be deposited at the registered office of the company not later than 48 hours before the commencement of the meeting.
- (4) The relevant Explanatory Statement in terms of Section 102 of the Companies Act, 2013 is enclosed herewith.

**Explanatory Statement pursuant to Section 102 of the Companies Act, 2013**

A special notice as per Section 115 of the Companies Act, 2013, has been received by the company from Ms. Revati, who holds in aggregate 50,000 Equity Shares aggregating

to 5% of shareholding of the Company's voting capital for removal of Mr. Srinivasan (DIN:\_\_\_\_) from Directorship of the company with immediate effect on the ground that he has indulged in fraudulent activities detrimental to the interest of the company.

None of the Directors / Key Managerial Personnel of the Company or their relatives is, in any way concerned or interested, financially or otherwise, in the resolution set out as Item Number 1 of the Notice except as a director.

The Board recommends the Ordinary Resolution set out as Item Number 1 of the Notice for approval by the Shareholders.

**Answer 6(d)**

“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 Himachal Chemicals Limited (the Company) do and hereby approve a new CSR Policy in suppression of the existing CSR Policy dated ..... (May 15, 2021 or any other date) in compliance with the requirements under Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.”

“RESOLVED FURTHER THAT the new CSR Policy of the Company be and is hereby approved and adopted by the Board of Directors of the Company and the same be signed by Mr. / Ms. ...., Director for identification purpose.”

“RESOLVED FURTHER THAT all the Directors of the Company and /or the Company Secretary of the Company and /or the CFO 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.”

**Answer 6A(i)**

Section 173(3) of the Companies Act, 2013 requires that not less than seven days' notice in writing shall be given to the directors for the Board meeting. Notice issued at a shorter period than 7 days shall be called as a shorter notice. As per SS-1 the fact that the meeting is being held at a shorter notice shall be stated in the notice. Therefore, yes the Board Meeting can be convened at a shorter notice.

Board meeting, at a shorter notice to transact urgent business shall be held, subject to following conditions:

(a) If the company is required to have independent director:

1. Presence of at least one independent director is required.
2. In case of absence of independent director, decision taken at such meeting shall be circulated to all the directors, and shall be final only on ratification thereof by at least one independent director.

As per para 1.3.11 of the SS-1, in case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the

Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.

As per Rule 3(6) of the Companies (Meetings of Board and its Powers) Rules, 2014, with respect to every meeting conducted through video conferencing or other audio-visual means authorized under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

**Answer 6A(ii)**

- (a) According to Section 151 of the Companies Act, 2013 read with rule 7(1) of the Companies (Appointment and qualifications of Directors) Rules, 2014, a listed company may have one director elected by such small shareholders in such manner and on such terms and conditions as may be prescribed. A listed company, may upon notice of not less than:
1. One thousand small shareholders; or
  2. One-tenth of the total number of such shareholders, whichever is lower; have a small shareholders director elected by the small shareholder.
- A 'Small Shareholder's 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 Act has used the expression "may" and not "shall." Hence, it is not mandatory for a listed company to appoint small shareholders' director.
- (b) As per rule 7(5) of the of the Companies (Appointment and qualifications of Directors) Rules, 2014, the tenure of small shareholders' 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.
- (c) As per rule 7(8) of the of the Companies (Appointment and qualifications of Directors) Rules, 2014, a person shall not hold the office of small shareholders' director in more than two companies. If second company is in competitive business or is in conflict with business of the first company, he shall not be appointed in second company.
- (d) As per rule 7(4) of the of the Companies (Appointment and qualifications of Directors) Rules, 2014, Small shareholders' director shall be considered as an independent director, if-
- a. he is eligible for appointment as an independent director as per sub-section (6) of section 149; and
  - b. he gives a declaration of his independence as per sub-section (7) of section 149.

**Answer 6A(iii)**

Section 180 of the Companies Act, 2013 deals with the restrictions on the power of Board. As per Section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a

company, without obtaining the approval of shareholders in a general meeting by passing special resolution, can borrow money including money already borrowed upto an amount which does not exceed the aggregate of paid-up capital of the company, free reserve and securities premium. Such borrowing shall not include temporary loans obtained from the company's bankers in ordinary course of business. Here, free reserves do not include the reserves set apart for specific purpose.

Since the decision to borrow is to be taken in a meeting to be held on 15th October 2023, the figures relevant for this purpose are the figures as per the Balance Sheet as at 31.03.2023. According to the above provisions, the Board of Directors of GCL Textiles Limited can borrow, without obtaining approval of the shareholders in general meeting, upto an amount calculated as follows:

<i>Particulars</i>	<i>Amt in Rs.</i>
Paid up Capital	37,50,000
General Reserve(being free reserve)	25,00,000
Credit balance in Profit & Loss Account (to be treated as free reserve)	5,00,000
Debenture Redemption Reserve	
(This reserve is not to be Considered since it is kept apart for specific purpose of debenture redemption)	-
Securities Premium	1,00,000
Aggregate premium of paid up capital, Free reserve And securities premium	68,50,000
Total borrowing power of the Board of Directors of the company, i.e. 100% of the aggregate of paid up capital, free reserves and securities premium	68,50,000
Less : Amount already borrowed as secured loans	15,00,000
Amount upto which the Board of Directors can further Borrow without the approval of shareholders in a general meeting	53,50,000

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

As per section 181 of the Companies Act, 2013, the Board of directors of a Company without obtaining the approval of shareholders in a general meeting, can make contributions to genuine charitable and other funds upto an amount which, in a financial year, does not exceed five per cent of its average net profits during the three financial year's immediately preceding, the financial year.

Accordingly, to the above provisions, the Board of Directors of GCL Textiles Limited can make contributions to charitable funds, without obtaining approval of the shareholders in a general meeting, upto an amount calculated as follows:

Net Profit for the three years (as calculated in accordance with the provisions of the Companies Act, 2013):

<i>Particulars</i>	<i>Rs.</i>
For the financial year ended 31.03.2021	6,25,000
For the financial year ended 31.03.2022	9,50,000
For the financial year ended 31.03.2023	17,25,000
Total	33,00,000
Average of net profits during three preceding years	11,00,000
Five percent thereof	55,000

Hence, the maximum amount that can be donated by the Board of Directors to charitable funds by GCL Textiles Limited during the financial year 2023-24 will be Rs. 55,000 without seeking the approval of the shareholders in a general meeting.

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## SETTING UP OF BUSINESS, INDUSTRIAL & LABOUR LAWS

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

**NOTE :** Answer **ALL** Questions.

### PART I

#### Question 1

*R is carrying on the business of trading of readymade garments as a sole proprietor in Delhi. He wants to diversify his business by opening the branches in other cities across the country. Due to shortage of funds and other resources, he approaches his friend K, who is a Practising Company Secretary (PCS) for seeking his advice on the form of business organisation which may be more beneficial for him. K advises him to convert his sole proprietorship form of business into a private company by involving his friends and relatives as the directors and members of the private company. He describes the characteristics of a private company under the Companies Act, 2013. K further advises R that the conversion of his existing form of business into a private company would provide him easy access to capital needed for diversifying his business.*

*In accordance with the advice of K, R decided to convert his sole proprietorship business into a private company with the proposed name, R Holding Pvt. Ltd. He makes an application to the Registrar of Companies (RoC), Delhi for reservation of the proposed name of the company, R Holding Pvt. Ltd. However, the proposed name is rejected by RoC, Delhi citing the common reasons for rejection of the proposed name. R makes a fresh application for reservation of the proposed new name of the company, R Cloth Trading Pvt. Ltd. and the name is reserved by RoC, Delhi. After filing the necessary e-forms and documents with RoC, Delhi, the company, R Cloth Trading Pvt. Ltd. is incorporated under the Companies Act, 2013.*

*K informs R about the utility of the Permanent Account Number (PAN) and accordingly, R obtains PAN in the name of the company. K also helps him in getting the GST registration in the name of the company and advises him to go for "Composition Scheme" under the GST Act, 2017. R approaches the banks for sanctioning loan for his business to enable him to open branches in the State of Uttar Pradesh. However, due to stringent loan sanctioning process of the banks, R fails to get loan from the banks for his business. R approaches K for seeking his help to arrange the required funds for the business and K helps R in getting loan for his business from, ST Finvest Ltd., a Non-Banking Financial Company (NBFC). The loan is processed quickly by ST Finvest Ltd. to R Cloth Trading Pvt. Ltd. at a very competitive rate of interest.*

*In view of the above, answer the following :*

- (a) Write down the characteristics of a private company under the Companies Act, 2013 as described by K to R.
- (b) Describe the common reasons on the basis of which RoC, Delhi has rejected the name reservation application of R with the proposed name, R Holding Pvt. Ltd.
- (c) State the utility of PAN for R Cloth Trading Pvt. Ltd.
- (d) Why does K advise R to go for "Composition Scheme" under the GST Act, 2017 ?

- (e) *Discuss the privileges available to ST Finvest Ltd. to process loan to R Cloth Trading Pvt. Ltd. quickly at a very competitive rate of interest as compared to the banks.*

(3 marks each)

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

#### **Characteristics of a Private Company**

- Restricts the right to transfer its shares.
- Minimum two members are required in private company.
- Limits the number of its members to two hundred.
- Prohibits any invitation to the public to subscribe for any securities of the company.
- Shareholders in the company have limited liability.
- There is no risk of takeover as transfer of shares is restricted.
- As private companies cannot raise funds from public and hence legal compliances are comparatively less.
- A private company have perpetual succession. Which means that company continue to exist even after death of owners.

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

Section 4(2) of the Companies Act, 2013 read with rule 8 and 8A of the Companies (Incorporation) Rules, 2014, provides that the name:

- (i) shall not be identical with or resemble too nearly to the name of an existing company;
- (ii) shall not constitute an offence under any law for the time being in force; or
- (iii) is not undesirable in the opinion of the Central Government.

Further, a company shall not be registered with a name which contains:

- (a) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or
- (b) such word or expression, as may be prescribed, unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

Section 4(5)(ii) of the Companies Act, 2013 states that where after reservation of name, it is found that name was applied by furnishing wrong or incorrect information, then the reserved name shall be cancelled and the person making application shall be liable to a penalty which may extend to one lakh rupees.

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

#### **Utility of PAN**

- This number is unique to each cardholder and helps identify the income tax payer.
- PAN enables the department to identify/ link all transactions of the PAN holder with the department. These transactions include tax payments, TDS/TCS

credits, returns of income, specified transactions, correspondence etc, and so on.

- It facilitates easy retrieval of information of PAN holder and matching of various investments, borrowings and other business activities of PAN holder.
- It also serves as an identity proof for a large number of purposes e.g. sale or purchase, by any person, of shares of a company or sale or purchase of any immovable property.

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

#### **Composition Scheme under the GST Act, 2017**

The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to Rs. 1.5 Crores (Rs. 75 lakhs in case of few States). The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers. Moreover, it is optional and the eligible person opting to pay tax under this scheme can pay tax at a prescribed percentage of his turnover every quarter, instead of paying tax at normal rate.

Composition Scheme is now made available to service providers as well, whose aggregate annual turnover does not exceed Rs.50 lakhs. Both exclusive service providers and mixed service providers of goods and services can opt for this scheme.

K advises R to opt for composition scheme as R is a small businessman starting his company afresh and normal GST registration can burdensome him with major compliances, which will not be in case of GST Composition Scheme.

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

A Non-Banking Financial Company (NBFC) engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business etc. The privileges available to the NBFC are listed below:

#### **1. Competitive Interest Rates**

Rate of interest is one of the main aspects of all types of loans. NBFC are having interest rates either equal to bank lending rates or at times even lower to bank rates.

#### **2. Quick processing**

At banks, it is very important that the applicant should fulfil the eligibility criteria but NBFC are lenient in this aspect. This makes loan approval easier, smother process and quicker.

#### **3. Less Rules and Regulations**

As NBFC are incorporated under the Companies Act, (though regulated by the Reserve Bank of India), the rules and regulations for lending are not as stringent as banks. This helps borrowers to get loans easily.

#### **4. Last Resort of Borrowing**

NBFCs are the largest propellants of ushering finance into the country. They are the last resorts of borrowing. Further, Agility is a key feature for NBFCs as it sets the banks apart.

### 5. Caters Customer needs

Another major advantage of NBFCs is the ground level understanding of their customer's profile and the need for their credit, which gives them an edge, as their ability to customize their products according to client needs.

### 6. Loan available for Individuals with Poor Credit Rating

Loans will be offered to individuals with low credit score by NBFCs but most of the time the interest rates for such borrowers will be higher than market rates.

7. Broder customer base & enhance customer trust on NBFC ultimately increase brand value of the NBFC.

### Question 2

- (a) *Aniket wishes to incorporate a company under section 8 of the Companies Act, 2013 for the purpose of promotion of education, research and social welfare. He approaches you to seek your advice on eligibility to apply for section 8 company license. Advise Aniket.*

**(3 marks)**

- (b) *YZ Ltd. desires to form a Special Purpose Vehicle (SPV) to start a new project. Brief the company on the benefits of forming a SPV.*

**(3 marks)**

- (c) *S&T Corp. is a company registered in Germany. The company desires to open a Branch Office in India. Advise S&T Corp. the activities permitted for a branch office in India of a person resident outside India under the Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016.*

**(3 marks)**

- (d) *Ratan has started the business of handicraft items in Chandni Chowk, Delhi. One of his friends advised him to obtain the license under the Shop and Establishment Act, 1948. He approaches you to seek your advice on the contents of application for license under the Shop and Establishment Act, 1948. Advise Ratan.*

**(3 marks)**

- (e) *A, B and C are the partners in the partnership firm registered under the Partnership Act, 1932 in the name of ABC Traders. Considering the benefits available to Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, 2008, the partnership firm is converted into LLP with the name ABC LLP and the same is registered. The Department of State Revenue issues a notice to the LLP to pay stamp duty and registration charges for transferring the assets of the erstwhile partnership firm to LLP. It is contended by the Department that the LLP is a separate distinct entity from that of its partners and hence the conversion amounts to change of legal rights. In the light of the decided case law, examine the validity of the contention of the Department of State Revenue.*

**(3 marks)**

### Answer 2(a)

#### Eligibility to apply for Section 8 Company License

A person or an association of persons proposed to be registered under the Companies Act, 2013, as a limited company is eligible to be registered as Section 8 Company if it

has below mentioned objectives and same should be upto the satisfaction of the Central Government:

- When the company intends to promote science, commerce, education, art, sports, research, religion, charity, social welfare, protection of the environment or alike other objectives;
- When the company intends to invest all the profits (if any) or any other income generated after incorporation in the promotion of such objects only;
- When the company does not intend to pay any dividend to its members;
- Any failure to meet the prescribed norms formulated by the Central Government may lead to the revocation of the licence of the Company on the orders of the Central Government.

As Aniket wishes to incorporate Section 8 company for the purpose of promotion of education, research and social welfare, he is advised to incorporate such section 8 company in compliance with the above stated eligibility criteria.

### Answer 2 (b)

#### Benefits of Special Purpose Vehicle (SPV)

- (a) **Ownership of Assets** — An SPV allows the ownership of a single asset often by multiple parties and allows for ease of transfer between parties.
- (b) **Minimum Statutory Requirement** — Depending on the choice of jurisdiction, it is relatively cheap and easy to set up an SPV.
- (c) **Clarity of documentation** — It is easy to limit certain activities or to prohibit unauthorised transactions within the SPV documentation.
- (d) **Tax benefits** — SPVs are often used to make a transaction tax efficient by choosing the most favorable tax residence for the vehicle. SPVs are method of financial engineering schemes which have as their main goal, the avoidance of tax.
- (e) **Legal protection** — By structuring the SPV appropriately, the sponsor may limit legal liability in the event that the underlying project fails.
- (f) **Accounting Reasons** — Debts raised & losses incurred through SPV are not reflected in the balance sheet of the sponsor so it reflects a pleasant picture and enhances the debt raising ability of the sponsor.
- (g) **Separation of Risk:** The key advantage is that it helps in separating the risk and freeing up the capital. As a result, the SPV and the sponsoring company are protected against risks like insolvency, which may arise during the course of operation.
- (h) **Securitization of assets:** The SPV also allows securitization of assets without disturbing the managerial relationship. Under the arrangement, any predictable income stream generated by secured assets can be securitized.

### Answer 2 (c)

Permitted activities for a branch office in India of a person resident outside India under the Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016

- i. Export/import of goods;
- ii. Rendering professional or consultancy services (other than practice of legal profession in any matter);

- iii. Carrying out research work in which the parent company is engaged;
- iv. Promoting technical or financial collaborations between Indian companies and parent or overseas group company;
- v. Representing the parent company in India and acting as buying/ selling agent in India;
- vi. Rendering services in Information Technology and development of software in India;
- vii. Rendering technical support to the products supplied by parent/group companies;
- viii. Representing a foreign airline/shipping company.

Accordingly, S&T Corp. is advised.

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

#### **License under Shop and Establishment Act**

Any shop or commercial establishment that commences operation must apply to the Chief Inspector for a Shop and Establishment Act for obtaining the License within the prescribed time.

The application for license in the prescribed form must contain:

- the name of the employer,
- address of the establishment,
- name of the establishment,
- category of the establishment,
- number of employees, and
- other relevant details as requested.

On submission of the application and review by the Chief Inspector, the shop or commercial establishment will be registered and a registration certificate will be issued to the occupier.

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

This given case is similar to a decided case law i.e. ***Sozin Flora Pharma LLP vs. State of Himachal Pradesh & Another***. The facts of the case are as follows:

In 2005, the petitioner was registered as a partnership firm in the name and style of M/S Sozin Flora Pharma, under the provisions of the Indian Partnership Act, 1932. In 2016 the firm was converted into LLP with the name M/S Sozin Flora Pharma LLP and the same was registered. However, the Department of State Revenue asked the LLP to pay stamp duty and registration charges for transferring the assets of the erstwhile partnership firm to the LLP. The petitioner [LLP] explained that upon conversion into LLP the vesting of property of the firm in the LLP is automatic and therefore it is not liable to pay stamp duty and registration charges. On behalf of the State, it was contended that the LLP is a separate distinct entity from that of its partners and hence the conversion amounts to change of legal rights.

The Hon'ble Court made reference to ***Section 58 of the Limited Liability Partnership Act, 2008 and held that the transfer and vestment of property of a partnership firm in favour of a converted LLP is statutory and is by Operation of law; the legal entity is not changed after conversion, only the identity of the petitioner firm as a legal entity undergoes a change*** and the order of the Revenue Department was quashed and set aside.

Hence, stamp duty and registration charges cannot be levied upon transferring the assets of the erstwhile partnership firm to LLP. Hence, the contention of the Department of State Revenue is not valid.

### Question 3

- (a) *MS Appliances, a small enterprise having investment in plant and machinery of ₹ 8.00 crores and turnover of ₹ 45.00 crores approaches you to seek your advice on Micro & Small Enterprises Cluster Development Programme (MSE-CDP) Scheme of the Government of India for MSMEs. Draft a brief note on MSE-CDP Scheme.*
- (b) *TKM Ltd. is a section 8 company registered under the Companies Act, 2013. The company desires to operate the educational institutes in the State of Madhya Pradesh. The company approaches you to seek your advice on the role of Incubators for assisting entrepreneurs in building and launching their start-ups. Draft a brief note on 'Incubators' as a mode of financing.*
- (c) *BN Ltd. and PL Ltd. desire to form a Joint Venture for setting-up a new infrastructure project in the State of Karnataka. Both the companies approach you to seek your advice on the Joint Venture Agreement to be entered into between them. Advise them the essential components of a Joint Venture Agreement.*
- (d) *A group of farmers desires to start the business of organic farm produce by opening branches in different districts and States of the country. The farmers have approached you to seek your advice on formation of a Multi State Co-operative Society under Multi State Cooperative Societies Act, 2002. Brief them on the documentary requirements for formation of Multi State Co-operative Society and the Authority with whom the application needs to be filed.*
- (e) *ABC Ltd. has been converted into a private limited company with the name ABC Pvt. Ltd. Brief the company on the major compliances that need to be followed by it after conversion into a private limited company.*

(3 marks each)

### Answer 3(a)

To,

M/s Appliances,

#### **Note on Micro & Small Enterprises Cluster Development Programme (MSE-CDP) Scheme**

This scheme is formulated to support the sustainability and growth of MSEs by addressing common issues such as improvement of technology, skills & quality, market access, etc. and to create/upgrade infrastructural facilities in the new/ existing Industrial Areas/Clusters of MSEs. Its main objectives are:

- To set up Common Facility Centers (for testing, training centre, raw material depot, effluent treatment, complementing production processes, etc).
- Promotion of green & sustainable manufacturing technology for the clusters.

The scheme is applicable to the existing entrepreneurs (in form of a SPV). The key benefits of the scheme are Creation of Common Facility Centers including Plug & Play Facilities and Support for Infrastructure Development Projects including Flatted Factory Complexes.

(Name)

(Designation)

**Answer 3(b)**

To,  
 The Board of Directors  
 TKM Ltd.

**Note on Incubators as mode of financing**

Incubators are organisations set-up with the specific goal of assisting entrepreneurs with building and launching their startups. Not only do incubators offer a high number of value added services (office space, utilities, admin & legal assistance, etc.), they often also make grants/ debt/ equity investments.

Atal Incubation Centres (AICs) is an initiative of the Atal Innovation Mission (AIM), NITI Aayog to foster innovation and entrepreneurial spirit while creating a supportive ecosystem for start-ups and entrepreneurs in India. Each AIC is supported with a grant of up to INR 10 crores over a period of 5 years. Since 2016, AIM has established 68 Atal Incubation Centres across 18 states and 3 UTs which have supported more than 2700 startups.

Incubators set-ups precede the seed funding stage and help the entrepreneur develop a business idea or make a prototype by providing resources and services in exchange for an equity stake. Incubators offer office space, administrative support, legal compliances, management training, mentoring and access to industry experts as well as to funding through angel investors or VCs.

The incubation period can be 2-3 years and admission is rigorous.

(Name)

(Designation)

**Answer 3(c)****Essential components of a Joint Venture (JV) Agreement**

In India, there is no legally prescribed format of a Joint Venture Agreement. However, in actual practice, the Agreement contains the following components:

- a) Description (Nature of the Agreement)
- b) Parties (full description of the parties to the Agreement)
- c) Recitals (states the situation as it existed prior to the execution of this Agreement; It is also used to convey the intention of the parties)
- d) Operative Part (defines the rules for the future; typically consists of name and constitution of the new entity being set up, equity investments, rules relating to loans by either party, activities to be undertaken, role of each party, constitution of the Board, names of the Chairman and Managing Director and their powers, duties, etc. matters to be decided by consensus, managerial remuneration, milestones to be reached and plan of action)
- (e) Legal aspects:
  - i. Amendments of the JV Agreement
  - ii. Duration of the JV
  - iii. Termination
  - iv. Dispute resolution by amicable consultation and/or Arbitration mechanism/Alternate form of Dispute Resolution.

- v. Courts of particular State (in India) or Country (where the JV partner is foreign entity) that will have the jurisdiction in the event of dispute
- vi. Confidentiality and Non-Disclosure Agreement
- vii. Non-compete clause
- viii. Indemnification
- ix. Procedure for execution.

### **Answer 3(d)**

#### **Formation of Multi State Co-Operative Society**

An application for registration of a multi-state cooperative society in specified Form should be filed with the Central Registrar of Cooperative Societies, New Delhi along with the following enclosures:

1. A certificate from the bank stating credit balance in the bank account in favour of multi-state cooperative society.
2. A scheme explaining how the proposed multi-state co-operative society has reasonable prospects of becoming a viable unit.
3. Four copies of bye-laws in original.
4. Proposed area of operation for registration shall initially be permitted for two contiguous states only.
5. List of at least 50 members from each state. The list has to be submitted in the format annexed with the Multi State Cooperative Societies Act, 2002 (MSCS Act, 2002) along with the copies of ID proofs of the members duly attested by Chief Promoter.
6. Certified copies of the resolutions passed by the proposed society along with the certified copy of the resolution of the promoters which shall specify the name and address of one of the applicant(s) to whom the Central Registrar may address correspondence under the rules before registration and dispatch or hand over registration documents.
7. Contact number and e-mail address of the Chief Promoter or Society on cover page.

### **Answer 3(e)**

Once the company gets converted into private limited company, it needs to intimate and inform the authorities, persons as required by law. Following are the major compliances that needs to be followed by the company after conversion into a private limited company:

- Arrange new rubber stamps and/or common seal (if keeping) with the new name, and all the stationary in the new name of the Company.
- Arrange printing of fresh copies of Altered Memorandum of Association and Articles of Association with new Certificate of Incorporation.
- Paint the new name of the Company outside every office, building etc. along with former name so changed.
- Get the new name printed on its business letters, letter heads, Bill heads, Invoice Forms, Receipt Forms and all other official publications along with former name so changed.

- Inform about the conversion of the Company to all concerned persons/ government authorities.
- Intimate all the Banks where Company is operating Bank Accounts about its conversion and file necessary applications and documents with regard to change in the name of Account holder.
- Make application to Income Tax Department for new Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN).

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

**Question 4**

- (a) *Explain the characteristics of a Nidhi Company under the Companies Act, 2013 and the Nidhi Rules, 2014.*
- (b) *Payment banks is a new model of banks conceptualised by the Reserve Bank of India (RBI). Elucidate.*
- (c) *Briefly state the types of FSSAI License under the Food Safety and Standards Act, 2006.*
- (d) *What do you mean by 'Other Service Providers' (OSP) under New Telecom Policy, 1999 ?*
- (e) *Explain in brief the eligibility criteria for obtaining Housing Finance Company Registration under the National Housing Bank Act, 1987.*

**(3 marks each)**

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

**Question 4A**

- (i) *Write down the procedure to apply for Industrial License under Industries (Development and Regulation) Act, 1951 ?*
- (ii) *Describe in brief the compliances under Environment Laws.*
- (iii) *Discuss in brief the eligibility for referring any entity as 'Indian Entity' under the new regime as per the provisions of Foreign Exchange Management Act, 1999.*
- (iv) *Explain in brief the objectives of Foreign Collaboration.*
- (v) *What are the restrictions imposed by the Reserve Bank of India on Chit Fund business ?*

**(3 marks each)**

**Answer 4 (a)**

**Characteristics of a Nidhi Company**

The characteristics of a Nidhi Company are be summarised below:

1. The object of Nidhi should be cultivating the habit of thrift and savings amongst the members and receiving deposits from and lending to its members for their mutual benefits.
2. It is allowed to transact business only with its members. Hence, in case a person wishes to place deposit with a Nidhi or borrow money from a Nidhi, he must first become a member (shareholder) of the Nidhi by subscribing to 10 equity shares or shares equivalent to Rs. 100.

3. After commencement of the Companies Act, 2013, no Nidhi shall issue preference shares.
4. They are allowed to open branches subject to compliance with Rule 10 of the Nidhi Rules, 2014, but do not operate on a Pan India basis.
5. They are incorporated as public companies with a minimum paid up equity share capital of Rs. 10,00,000.
6. Loans may be provided only to its members and should be fully secured.
7. A director of a Nidhi shall be a member and shall hold office for a term upto 10 consecutive years on the Board of a Nidhi.
8. A Nidhi shall not declare dividend exceeding 25% per cent in a financial year.
9. Nidhi Company shall adhere to the prudential norms for revenue recognition and classification of assets in respect of mortgage loans or jewel loans as provided in Rule 20 of the Nidhis Rules, 2014.

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

Payments Banks (PBs) is a new model of banks conceptualised by the Reserve Bank of India (RBI), these banks can accept a restricted deposit, which is currently limited to Rupees 1 lakh per individual customer and may be increased further. In order to expand the ability of payments banks to cater to the growing needs of their customers, the current limit on maximum end of day balance of Rs.1 lakh per individual customer was increased to Rs.2 lakh. They can pay interest on these deposits just like savings bank account. Both current account and savings accounts can be operated by such banks.

PBs comes under a differentiated bank licence since it cannot offer all the services that a commercial bank offers. In particular, a payments bank cannot lend.

The main objective of PBs is to widen the spread of payment and financial services to small business, low-income households, and migrant labour workforce in secured technology-driven environment. It can issue services like ATM cards, debit cards, net-banking, third party transfers and mobile-banking and offer remittance services. These banks cannot grant loans or issue Credit cards.

To open a bank account and the application process of PBs is made very easy as compared to other banks. These bank accounts can be opened instantly through their respective mobile apps just by providing details like Aadhar number with KYC verification. Most of the payment banks have a non-NBFC heritage and will use payment bank as a customer retention and acquisition mechanism.

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

##### **FSSAI License**

Any person or entity that is not classified as a petty food business operator is required to obtain a FSSAI license for operating a food business in India. FSSAI license is of two types:

- i. **FSSAI State License:** FSSAI State License is needed for small to medium sized Food Companies which has an annual turnover of Rs 12 Lakhs — Rs 20 Crores. State FSSAI license is required for medium sized food manufacturers, processor and transporters.
- ii. **FSSAI Central License:** It is mandated for all Food giants with an annual turnover of more than Rs 20 Crores. Based on the size and nature of the business, the licensing authority would change. Large food manufacturer/

processors/transporters and importers of food products require central FSSAI license.

#### **Answer 4 (d)**

##### **Other Service Providers (OSP)**

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 are categorised as 'Other Service Providers' (OSP) under New Telecom Policy, 1999.

They must obtain a telecom license from Department of Telecommunication (DoT), 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.

#### **Answer 4 (e)**

##### **Eligibility Criteria for Obtaining Housing Finance Company Registration**

Based on the provisions of section 29A of the National Housing Bank Act 1987, no Housing Finance Company shall start to carry out its operations of providing housing loans unless the same had met all the accompanying guidelines.

- **Net Owned Funds:** It shall be noted that the Net owned fund of a Housing Finance Company must be at least as the Reserve Bank may, by notification, specify from time to time. Therefore, an applicant needs to satisfy the requirements of net worth for obtaining Housing Finance Company Registration.
- **Must be registered under the Companies Act 2013:** The said Company requires to satisfy the requirements of a private limited company under the provisions of the Companies Act 2013 or the Companies Act, 1956.
- **Housing Finance Activities as Object Clause:** It is the last but the most important requirement of all that the objects of this type of company must mention for financing housing loans and other commercial complexes. Besides providing finance, the said company must also have the predictions of earning.

The management and operations of the company must act in good faith and in the interest of the public and other consumers. That means they need to work in the interests of the public.

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

##### **Procedure to apply for Industrial License**

1. All applications for Industrial License under the Industries (Development and Regulation) Act, 1951 can now be applied online on G2B Portal in their respective forms.
2. The Applications are scrutinized for their completeness. Information in respect of incomplete applications is sought from the applicants.
3. If the applications for grant of license are complete in all respect with necessary documents, Department for Promotion of Industry and Internal Trade (DPIIT)

circulates them to concerned administrative ministries, Ministry of Home Affairs, Concerned State Government and other concerned agencies for their comments.

4. After receipts of Comments from the concerned Ministries/Agencies, files are processed and submitted to the Licensing committee for consideration.
5. Licensing committee can recommend for grant of license/rejection of proposal/deferment of the proposal, based on the comments received and deliberations in the Committee. After recommendation, the approval of the Minister in charge of DPIIT is obtained for grant of licenses or otherwise.

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

To protect the environment, a broad range of Laws, Rules, Regulations and Standards are framed by the Governments and Regulatory Bodies established by the Government. Following Environment Laws are required to be complied:

- Environment Clearances under Environmental Protection Act, 1986
- Environmental Impact Assessment issued under Environmental Protection Act, 1986
- Air Prevention and Control of Pollution Act 1981
- The Water (Prevention and Control) Act, 1974
- The Water (Prevention and Control of Pollution) Cess Act ,1977
- Hazardous Waste (Management, Handling and Transboundary Movement) Rules,
- Plastic Waste Management Rules, 2016
- Forest Clearance under Forest Act.

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

Following are the Indian entity as per the Foreign Exchange Management Act, 1999 and Rules and Regulation made thereunder:

- a Company defined under the Companies Act, 2013 or
- a Body Corporate incorporated by any law for the time being in force or
- a Limited Liability Partnership formed under the Limited Liability Partnership Act, 2008 or
- a Partnership Firm registered under the Indian Partnership Act, 1932.

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

##### **Objectives of Foreign Collaboration**

The main intention/ prime goal or objective of foreign collaboration is to:

- Improve the financial growth of the collaborating entities.
- Occupy a major market share for the collaborating entities.
- Reduce the higher operating cost of a non-resident entity.
- Make an optimum and effective use of resources available in the resident entity's country.

- Generate employment in the resident entity's country.

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

The chit fund business is governed by Chit Funds Act, 1982 which is a Central Act administered by State Governments. The Chit Fund Companies registered under the Chit Fund Act can legally carry-on chit fund business. Chit Funds activity involves contributions by members in instalments by way of subscription to the Chit and by rotation each member of the Chit receives the chit amount.

As per section 45I (bb) of the RBI Act, any subscription to Chit is specifically excluded from the definition of deposit and cannot be termed as deposit. While Chit fund Companies registered with respective State Governments may collect subscription to Chit as above, they are prohibited by RBI from accepting deposits.

Chit Funds Act, 1982 provides that nothing in section 46 shall be deemed to affect the power of the Reserve Bank to inspect the books and records of any foreman under the provisions of section 45N of the Reserve Bank of India Act, 1934

The Reserve Bank may, if it considers necessary forward a copy of its report or of any part of its report on the inspection of the books and records of a foreman to the foreman for taking necessary action.

## **PART II**

### **Question 5**

*Reena has joined as the Management Trainee in the Company Secretary department of PP Ltd. in the month of September, 2022. The Company is a listed company. Apart from passing CS Professional examination, Reena has also completed her MBA (Finance) from a reputed Management Institute. She is passionate to learn the compliances under the Companies Act, 2013, the SEBI Act, 1992 and other laws applicable to the company. On the request of Reena, the Company Secretary of the company advises Reena to meet Sanjeev, who is the senior partner of AB Solicitors, the legal consultants of the company, for understanding the compliances under the various laws.*

*On 10th July 2023, Reena visits the office of Sanjeev. During the discussion, Sanjeev highlights that in the CS department of PP Ltd., the male CS trainees are getting higher stipend as compared to the stipend of female CS trainees. Sanjeev explains her about the reforms proposed by Code on Social Security, 2020, which amends and consolidates the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors or for matters connected therewith or incidental thereto. He also mentions that in order to ensure security for all workers, the Central Government has subsumed nine Labour Laws into the Social Security Code to secure the rights of workers for insurance, pension, gratuity, maternity benefit etc. Further, the Government can fund the contribution of workers from disadvantaged section. He also informs that being a cotton textile unit, there are some restrictions for PP Ltd. on engagement of women and children near cotton openers, but the company is not following the prescribed rules.*

*After the meeting, Sanjeev advises Reena to come again to his office on the next day so that he may explain her about the pending legal cases. She returns back to the office of PP Ltd. and prepares a detailed report on equal pay for equal work and laws which are proposed to be merged in Social Security Code and restriction on employment of women and children. She sends the said report to the Managing Director of PP Ltd. through email with a copy to the senior partner of the legal consultants of the company.*

*As per the advice of Sanjeev, Reena visits the office of AB Solicitors, legal consultants, again on 11th July 2023. On reaching the office of legal consultants, she is informed that Sanjeev is on leave for the day due to urgent personal work. Mukesh, who is the junior partner in the legal consultancy firm, tells her that he is preparing replies in respect of various legal cases of the company and she should also learn how to prepare such replies. Reena being excited to learn new things enters into the chamber of Mukesh. Mukesh tells Reena that he may provide very useful case studies to her for her learning and starts making physical contact and advances with her. Being aggrieved by the behaviour of Mukesh, Reena returns to the office of PP Ltd. and makes a complaint before the internal complaints committee of the company for sexual harassment. Reena wants that her identity, address and contents of her complaint should not be published, communicated or made known to the public. In view of the above, answer the following :*

- (a) *In the light of a decided case law, examine whether PP Ltd. is violating the rule of Equal Pay for Equal Work ?*
- (b) *What are the nine Labour Laws that have been subsumed by the Social Security Code by the Central Government ?*
- (c) *Examine whether PP Ltd. is contravening the provisions of law regarding prohibition of employment of women and children near cotton openers ?*
- (d) *Briefly state the provisions regarding prohibition of publication or making known contents of complaint and inquiry proceedings under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.*

**(5 marks each)**

**Answer 5 (a)**

Article 39 of the Constitution of India requires the state, in particular, to direct its policy towards securing:

- a) that all citizens, irrespective of sex, equally have the right to an adequate means of livelihood;
- b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
- c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- d) that there is equal work for both men and women;
- e) that the health and strength of workers, men and women, and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

In the case of ***Randhir Singh v. Union of India (1982 AIR 879)*** the Supreme Court has held that the principle of "Equal pay for equal work though not a fundamental right" is certainly a constitutional goal. Article 39 (d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. The doctrine of equal pay for equal work is equally applicable to persons employed on a

daily wage basis. They are also entitled to the same wages as other permanent employees in the department employed to do the identical work.

Accordingly, PP Ltd. is violating the rule of Equal Pay for Equal Work.

**Answer 5 (b)**

The Central Government has subsumed following 9 Labour Laws into the Social Security Code:

- (1) The Employees Provident Funds and Miscellaneous Provisions Act, 1952;
- (2) The Employees State Insurance Act, 1948;
- (3) The Employees Compensation Act, 1923;
- (4) The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
- (5) The Maternity Benefit Act, 1961;
- (6) The Payment of Gratuity Act, 1972;
- (7) The Cine-workers Welfare Fund Act, 1981;
- (8) The Building and Other Construction Workers' Welfare Cess Act, 1996; and
- (9) The Unorganised Workers Social Security Act, 2008.

**Answer 5 (c)**

**Prohibition of employment of women and children near cotton-openers**

Section 27 of the Factories Act, 1948, states that no woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work. It is provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

Accordingly, PP Ltd. is contravening the provisions of law regarding prohibition of employment of women and children near cotton openers.

**Answer 5 (d)**

**Prohibition of publication or making known contents of complaint and inquiry proceedings**

According to Section 16 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner.

It is provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

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

**Question 6**

- (a) Arun was working in a factory from 1st October 2020. He met with an accident while working in the factory on 30th June 2023 which resulted into his permanent disablement. His services were terminated by the owner of the factory. The owner also denied to pay gratuity to Arun on the ground that he had not rendered continuous service of five years. Referring the provisions of Payment of Gratuity Act, 1972, examine the correctness of the decision of the owner of the factory for non-payment of gratuity to Arun.

**(5 marks)**

- (b) Define the term 'Adolescent' under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. Also explain the provisions regarding hours and period of work of an adolescent in any establishment under the Act.

**(5 marks)**

- (c) Explain in brief the provisions regarding payment of Subsistence Allowance under the Industrial Employment (Standing Orders) Act, 1946.

**(5 marks)**

- (d) What are the obligations of Employers and Apprentice under the Apprentices Act, 1961 ?

**(5 marks)**

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

**Question 6A**

- (i) Describe in brief the specific responsibility of the occupier in relation to hazardous processes under the Factories Act, 1948.
- (ii) Write down the benefits available to the insured persons or their dependants under the Employees' State Insurance Act, 1948.
- (iii) Distinguish between 'Lay off' and 'Lock out' under the Industrial Disputes Act, 1947.
- (iv) Explain in brief the classes of employees to whom the provisions of the Payment of Bonus Act, 1965 are not applicable.

**(5 marks each)**

**Answer 6 (a)**

According to Section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

- (a) on his superannuation, or  
 (b) on his retirement or resignation, or  
 (c) on his death or disablement due to accident or disease.

The completion of continuous service of five years is not necessary where the termination of the employment of any employee is due to death or disablement. Further, the period of continuous service is to be reckoned from the date of employment and not from the date of commencement of this Act.

For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

Mere absence from duty without leave cannot be said to result in breach of continuity of service for the purpose of this Act. **[Kothari Industrial Corporation v. Appellate Authority, 1998]**

In view of aforesaid provisions of Act, Arun is entitled for the gratuity payment from the owner of the factory and the decision of owner in non-payment of gratuity is not correct.

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

As per the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, Adolescent means a person who has completed his fourteenth year of age but has not completed his eighteenth year.

#### **Hours and Period of Work**

Section 7 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 provides that no adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.

The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour. The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

This section also stipulates that:

- No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.
- No adolescent shall be required or permitted to work overtime.
- No adolescent shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

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

#### **Payment of Subsistence Allowance**

Statutory provision for payment of subsistence allowance has been made under Section 10A of the Industrial Employment (Standing Orders) Act, 1946, provides as follows:

Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such a workman the subsistence allowance

- (a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension: and
- (b) at the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

Any dispute regarding subsistence allowance may be referred by the workman or the employer, to the Labour Court constituted under the Industrial Disputes Act, 1947.

However, if the provisions relating to payment of subsistence allowance under any other law for the time being in force are more beneficial, then the provisions of such other law shall be applicable.

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

##### **Obligations of Employers**

Every employer shall have the following obligations in relation to an apprentice under the Apprentices Act, 2013, namely: —

- to provide the apprentice with the training in his trade in accordance with the provisions of this Act and the rules made thereunder;
- if the employer is not himself qualified in the trade, to ensure that a person who possesses the prescribed qualifications is placed in charge of the training of the apprentice;
- to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade test of apprentices;
- to carry out his obligations under the contract of apprenticeship.

##### **Obligations of Apprentice**

Every trade apprentice undergoing apprenticeship training shall have the following obligations under the Apprentices Act, 2013, namely: -

- to learn his trade conscientiously and diligently and endeavor to qualify himself as a skilled craftsman before the expiry of the period of training;
- to attend practical and instructional classes regularly;
- to carry out all lawful orders of his employer and superiors in the establishment; and
- to carry out his obligations under the contract of apprenticeship.

Every graduate or technician apprentice, technician (vocational) apprentice undergoing apprenticeship training shall have the following obligations:

- to learn his subject field in engineering or technology or vocational course conscientiously and diligently at his place of training;
- to attend the practical and instructional classes regularly;
- to carry out all lawful orders of his employer and superiors in the establishment;
- to carry out his obligations under the contract of apprenticeship.

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

##### **Specific responsibility of the occupier in relation to hazardous processes**

Section 41C of the Factories Act, 1948, states that every occupier of a factory involving any hazardous process shall maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed.

Such occupier shall appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed. It is provided that where any question arises as to the qualifications and experience of a person so appointed, the decision of the Chief Inspector shall be final.

Such occupier shall provide for medical examination of every worker-

- I. before such worker is assigned to a job involving the handling of, or working with, a hazardous substance, and
- II. while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months in such manner as may be prescribed.

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

Under Section 46 of the Employees State Insurance Act, 1948 Act, the insured persons or their dependents are entitled to the following benefits on prescribed scale:

- (a) periodical payments in case of sickness certified by medical practitioner;
- (b) periodical payments to an insured workman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement;
- (c) periodical payment to an insured person suffering from disablement as a result of employment injury;
- (d) periodical payment to dependents of insured person;
- (e) medical treatment and attendance on insured person;
- (f) payment of funeral expenses on the death of insured person at the prescribed rate.

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

#### **Difference between lay-off and lock-out under the Industrial Disputes Act, 1947**

- (1) Lay-off means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

While Lock-out refers to the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. It is a situation in which an employer prevents employees from working by refusing to allow them to enter the workplace. It is caused by a labor dispute between the employer and the employees.

- (2) In lay-off, the business continues, but in lock-out, the place of business is closed down for the time being. In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be unjustified.
- (3) Lay-off is the result of trade reasons but lock-out is a weapon of collective bargaining.
- (4) Lock-out is subject to certain restrictions and penalties but it is not so in case of lay-off.

However, both are of temporary nature and in both cases the contract of employment is not terminated but remains in suspended animation.

**Answer 6A (iv)**

Section 32 of the Payment of Bonus Act, 1965 provides that the Act shall not apply to the following classes of employees:

- (i) employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;
- (ii) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958;
- (iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers;
- (iv) employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a Local authority;
- (v) employees employed by --
  - (a) the Indian Red Cross Society or any other institution of a like nature (including its branches);
  - (b) universities and other educational institutions;
  - (c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;
- (vi) employees employed by the Reserve Bank of India;
- (vii) employees employed by --
  - (a) the Industrial Finance Corporation of India;
  - (b) any Financial Corporation established under section 3, or any Joint Financial Corporation established under section 3A, of the State Financial Corporations Act, 1951;
  - (c) the Deposit Insurance Corporation;
  - (d) the National Bank for Agriculture and Rural Development;
  - (e) the Unit Trust of India;
  - (f) the Industrial Development Bank of India;
  - (g) the Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;
  - (h) the National Housing Bank;
  - (i) any other financial Institution (other than Banking company) being an establishment in public sector, which the Central Government may by notification specify having regard to-
    - i. its capital structure;
    - ii. its objectives and the nature of its activities;
    - iii. the nature and extent of financial assistance or any concession given to it by the Government; and
    - iv. any other relevant factor;

- (viii) employees employed by inland water transport establishments operating on routes passing through any other country,

Apart from the above, the appropriate Government has necessary powers under Section 36 to exempt any establishment or class of establishments from all or any of the provisions of the Act for a specified period having regard to its financial position and other relevant circumstances and if it is of the opinion that it will not be in the public interest to apply all or any of the provisions of this Act thereto. It may also impose such conditions while according the exemptions as it may consider fit to impose.

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## CORPORATE ACCOUNTING AND FINANCIAL MANAGEMENT

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

**NOTE :** Answer **ALL** Questions.

### PART I

#### Question 1

*Technocrats Ltd. invited applications for 1,00,000 equity shares of ₹ 30 each. The shares were issued at a premium of ₹ 15 per share, payable as follows :*

*On Application and Allotment : ₹ 24 per share (incl. premium of ₹ 9)*

*On first and final call : Balance including remaining premium*

*Applications for 1,50,000 shares were received. Applicants of 10,000 shares were rejected on allotment, and pro-rata allotment was made to remaining applicants as follows :*

*Category A — Applicants for 80,000 shares were allotted 60,000 shares*

*Category B — Applicants for 60,000 shares were allotted 40,000 shares*

*Mr. X, who belonged to A category, was allotted 300 shares. He failed to pay the call money. Mr. Y, who belonged to B category and applied for 300 shares, also failed to pay the call money.*

*These shares were forfeited and reissued as fully paid @ ₹ 36 per share. Assume that the excess received on application is to be adjusted towards share capital account first. You are required :*

(a) *Pass the necessary journal entries to record the above transactions.*

(8 marks)

(b) *Assuming opening bank balance of ₹ 1,25,000, prepare the Bank account of the company in the light of above transactions.*

(3 marks)

(c) *What are the restrictions on use of Securities Premium Account as per provisions of the Companies Act, 2013 ? What is the implication if a company violates these provisions ?*

(4 marks)

**Answer 1 (a)****When excess application money utilized for payment of Share Capital**

<i>Date</i>	<i>Particulars</i>	<i>L.F.</i>	<i>Amount Dr (Rs.)</i>	<i>Amount. Cr. (Rs.)</i>
	Bank A/c To Share Application and Allotment A/c (Being amount received on application)	Dr.	36,00,000	36,00,000
	Share Application and Allot. A/c To Share Capital A/c To Securities Premium A/c To Bank A/c (Being application and allotment amount relating to 1,00,000 shares transferred to Share Capital account and Securities Premium account and application money on rejected applications returned back)	Dr.	26,40,000	15,00,000 9,00,000 2,40,000
	Equity Share first and Final Call A/c To Share Capital A/c To Securities Premium A/c (Being call money due on 1,00,000 shares)	Dr.	21,00,000	15,00,000 6,00,000
	Bank A/c Share Application and Allot. A/c To Equity' Share first and Final Call A/c (Being Call money received and excess application and allotment money adjusted)	Dr. Dr.	11,34,300 9,60,000	20,94,300
	Equity Share Capital A/c Securities Premium A/c	Dr. Dr.	15,000 3,000	

	To Equity Share first and Final Call A/c			5,700
	To Share Forfeited A/c			12,300
	(Being shares issued to X and Y forfeited for non-payment of call money and Calls in arrears account closed)			
	Bank A/c	Dr.	18,000	
	To Equity Share Capital A/c			15,000
	To Securities Premium A/c			3,000
	(Being forfeited shares reissued @) Rs. 36 each and relevant amounts transferred to Share Capital and Securities Premiums Accounts)			
	Share Forfeited A/c	Dr.	12,300	
	To Capital Reserve A/c			12,300
	(Being unused Securities Premium Account transferred to Capital Reserve Account)			

**Working Notes:**

## (1) Calculation of Calls in Arrears:

(i)	On Mr. X's Shares: Amount due on call= 300x21	=	Rs. 6300
	Amount Adjusted through Application and Allotment Money		
	(80000x300/60000)- 300 or (400-300) x Rs.24		Rs. 2400
	Call in Arrears		Rs. 3900
(ii)	On Mr. Y's Shares: Amount due on call= 200x21	=	Rs. 4200
	Amount Adjusted through Application and Allotment Money		
	(20000x300/60000) x Rs.24		Rs. 2400
	Call in Arrears		Rs. 1800
	Total Calls in arrears = 3900 +1800 = Rs. 5700		

(2) Amount Received on Call = (100000 x Rs.21) – 960000 (Excess of Application Money 40000 x 24) – 5700 (Calls in Arrears) = Rs. 11,34,300.

**Alternate Answer 1 (a)****When excess application money utilized for payment of Share Capital**

<b>Date</b>	<b>Particulars</b>	<b>L.F.</b>	<b>Amount Dr (Rs.)</b>	<b>Amount. Cr. (Rs.)</b>
	Bank A/c Dr. To Share Application and Allotment A/c (Being amount received on application)		36,00,000	36,00,000
	Share Application and Allot. A/c Dr. To Share Capital A/c To Securities Premium A/c To Equity' Share First and Final Call A/c To Bank A/c (Being application and allotment amount relating to 1,00,000 shares transferred to Share Capital account and Securities Premium account and application money on rejected applications returned back)		36,00,000	15,00,000 9,00,000 9,60,000 2,40,000
	Equity Share first and Final Call A/c Dr. To Share Capital A/c To Securities Premium A/c (Being call money due on 1,00,000 shares)		21,00,000	15,00,000 6,00,000
	Bank A/c Dr. Calls in Arrears A/c Dr. To Equity' Share first and Final Call A/c (Being Call money received and excess application and allotment money adjusted)		11,34,300 5,700	11,40,000
	Equity Share Capital A/c Dr. Securities Premium A/c Dr. To Calls in Arrears A/c To Share Forfeited A/c (Being shares issued to X and Y forfeited for non-payment of call money and Calls in arrears account closed)		15,000 3,000	5,700 12,300
	Bank A/c Dr. To Equity Share Capital A/c To Securities Premium A/c		18,000	15,000 3,000

	(Being forfeited shares reissued @) Rs. 36 each and relevant amounts transferred to Share Capital and Securities Premiums Accounts)			
	Share Forfeited A/c To Capital Reserve A/c (Being unused Securities Premium Account transferred to Capital Reserve Account)	Dr.	12,300	12,300

**Working Notes:**

## (1) Calculation of Calls in Arrears:

- (i) On Mr. X's Shares: Amount due on call=  $300 \times 21 =$  Rs. 6300  
Amount Adjusted through Application and Allotment Money  
 $(80000 \times 300 / 60000) - 300$  or  $(400 - 300) \times$  Rs.24 Rs. 2400  
Call in Arrears Rs. 3900
- (ii) On Mr. Y's Shares: Amount due on call=  $200 \times 21 =$  Rs. 4200  
Amount Adjusted through Application and Allotment Money  
 $(20000 \times 300 / 60000) \times$  Rs.24 Rs. 2400  
Call in Arrears Rs. 1800  
Total Calls in arrears =  $3900 + 1800 =$  Rs. 5700

- (2) Amount Received on Call =  $(100000 \times \text{Rs.}21) - 960000$  (Excess of Application Money  $40000 \times 24) - 5700$  (Calls in Arrears) = Rs. 11,34,300.

**Answer 1 (b)****Bank Account of the Company**

Date	Particular	J.F.	Amt. Dr. (Rs.)	Date	Particular	J.F.	Amt. Cr (Rs.)
	To Balance b/d		1,25,000		By Share Application and Allotment A/c		2,40,000
	To Share Application and Allotment A/c		36,00,000		By Balance c/d		46,37,300
	To Equity Share first and Final Call A/c		11,34,300				
	To Equity Share Capital A/c		15,000				

	To Securities Premium A/c		3,000				
	<b>Total</b>		<b>48,77,300</b>		<b>Total</b>		<b>48,77,300</b>

**Answer 1 (c)**

As per the provisions of the Companies Act, 2013, amount of premium received on issue of shares is a capital receipt and is to be transferred to a separate account called "Securities Premium Account". According to the Companies Act, 2013, "Securities Premium Account" can be used only for the following purposes:

1. Towards the issue of unissued shares to the members of the company as fully paid bonus shares.
2. In writing-off the preliminary expenses of the company.
3. In writing-off the expenses of or the commission paid or discount allowed on any issue of shares or debentures of the company.
4. In providing for any premium payable on redemption of any redeemable preference shares or any debentures of the company, or
5. For purchase of its own shares or other securities u/s 68.

If the company contravenes the above provisions and utilizes the amount of securities premium except for the modes specified above, it will attract the provisions relating to reduction of share capital of a company u/s 66 of the Companies Act, 2013.

**Question 2**

- (a) *Following Summarized Statement of Profit/Loss and Balance Sheet are provided by ABC Ltd. :*

*Summarized Profit/Loss account of ABC Ltd.  
(For the year ended 31st March, 2023)*

<i>Particulars</i>	<i>Amount (in crore ₹)</i>
<i>Sales</i>	<i>144</i>
<i>Add : Other Income</i>	<i>15</i>
<i>Less : Cost of Sales</i>	<i>110.02</i>
<i>Gross Margin (excluding other incomes)</i>	<i>33.98</i>
<i>Operating Expenses :</i>	
<i>Administration :</i>	<i>14.36</i>
<i>Selling and Distribution :</i>	<i>5.36</i>
<i>Profit Before interest and Tax (EBIT)</i>	<i>29.26</i>
<i>Interest</i>	<i>4.01</i>
<i>Profit Before Tax (EBT)</i>	<i>25.25</i>
<i>Provision for Taxes</i>	<i>9.47</i>
<i>Profit after Tax (EAT)</i>	<i>15.78</i>

*Balance Sheets of ABC Ltd.  
(As on 31st March, 2023)*

<i>Particulars</i>	<i>Amount (in crore ₹)</i>
<i>Fixed Assets (Net)</i>	<i>37.50</i>
<i>Current Assets :</i>	
<i>Inventory</i>	<i>16.64</i>
<i>Accounts Receivable</i>	<i>15.43</i>
<i>Cash and Bank</i>	<i>1.75</i>
<i>Less : Current Liabilities</i>	<i>11.25</i>
<i>Net Current Assets</i>	<i>22.57</i>
<i>Total Assets</i>	<i>60.07</i>
<i>Liabilities and Owners' Equity :</i>	
<i>Share Capital</i>	<i>27.00</i>
<i>Reserves and Surplus</i>	<i>6.36</i>
<i>Long-term Debt</i>	<i>26.71</i>
<i>Total</i>	<i>60.07</i>

You are required to calculate the following ratios :

- (i) Current Ratio
- (ii) Liquid Ratio
- (iii) Gross Profit Margin Ratio
- (iv) Net Profit Margin Ratio
- (v) Return on Equity.

(5 marks)

- (b) (i) The following balances appeared in the books of a Company as on 1st April, 2022 :

Sinking Fund for Redemption of Debentures ₹ 5,50,000;

Sinking Fund Investments ₹ 3,44,325;

7% Debentures ₹ 10,00,000.

In order to redeem these debentures, the company sold the Sinking Fund Investments and realized ₹ 3,45,000.

You are required to pass journal entry for the accounting treatment of profit/ loss on sale of Sinking Fund Investment.

- (ii) Out of ₹ 10,00,000 6% Debentures outstanding on 1st April, 2022, ₹ 5,00,000. Debentures were redeemed on 31st October, 2022. The balance of Debenture Sinking Fund Account on 1st April, 2022 was ₹ 10,00,000. Interest on debenture is paid on 31st March, 2022.

*How will you deal with the balance of Debenture Sinking Fund Account at the time of its redemption ? You are required to pass necessary journal entry in this regard. What will be the amount of interest paid on these debentures at the time of redemption ?*

*(2+3=5 marks)*

*(c) Y Ltd. recently reported the following income Statement :*

	(₹ in Crore)
Sales	600
Operating Cost	470
EBIT	130
Interest	40
EBT	90
Taxes @ 40%	36
EAT (Net Income)	54
Dividend	21.6
Retained Earnings	32.4

*This year company is forecasting 25% increase in sales and it expects that its year end operating cost will be around 70% of sales. It is expected that tax rate, interest and dividend pay-out ratio will be constant. You are required to compute projected Net Income and expected growth rate in dividend.*

*(5 marks)*

**Answer 2 (a)**

<b>Ratios</b>	
(i) Current Ratio = Current Assets / Current Liabilities	$(16.64+15.43+1.75)/11.25$ = 3.006 times (3.01 times) Or 3.01:1
(ii) Liquidity Ratio = Liquid Assets*/Current Liabilities * Current Assets excluding Inventory	$(15.43+ 1.75)/11.25$ = 1.527 times (1.53 times) Or 1.53:1
(iii) Gross Profit Margin = Gross Profit/Net Sales * 100	$33.98 /144* 100$ = 23.60%
(iv) Net Profit Margin = Net Profit after Tax / Net Sales * 100	$15.78/144* 100$ = 10.96%

(v) Return on Equity = Earning for Equity /Average Equity *100 (In place of Average Equity, Closing Equity may be used)	15.78/33.36* 100 = 47.30% 33.36 = (27 + 6.36)
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**Answer 2(b)**

(i)	Sale Price of Investments	Rs. 3,45,000
	Less: Book Value of Investments Sold	Rs. 3,44,325
	Profit on Sale of Investments	Rs. 675

Journal Entry:

Debenture Sinking Fund Investments A/c	Dr.	675
To Debenture Sinking Fund A/c / P&L		675

(Profit on Sale of Investments transferred to Sinking Fund Account)

- (ii) On 31<sup>st</sup> October, 2022, redemption of Debenture of Rs. 5,00,000. The following entry are passed.

Debenture Sinking Fund A/c	Dr.	5,00,000
To General Reserve A/c		5,00,000

(Amount transferred on redemption of debenture)

The interest on debentures is paid each year on 31<sup>st</sup> March, the interest paid on redeemed debentures from 1<sup>st</sup> April, 2022 to 31<sup>st</sup> October, 2022 i.e. for 7 months @ 6% per annum is calculated as under:

Amount of Interest = 5,00,000 x 7 x 6% / 12 = Rs. 17,500

**Answer 2(c)**

Computation of Projected Net Income and expected growth rate in Dividend

<i>Particulars</i>	<i>Amount (Rs. in crore)</i>
Sales (600+25%)	750
Less : Operating cost (70% of 750)	525
EBIT	225
Less : Interest	40
EBT	185
Less : Tax @40%	74
EAT (Net Income)	111
Dividend (40%*111)	44.40
Retained Earnings	66.60

Note: 1

$$\begin{aligned} \text{Dividend Pay-out Ratio (Existing Year)} &= [\text{Dividend/Net Income}] * 100 \\ &= [21.6/54] * 100 = 40\% \end{aligned}$$

Note: 2

$$\begin{aligned} \text{Expected Growth rate in Dividend} \\ &= [(44.40 - 21.6) / 21.6] * 100 \\ &= 105.55\% \end{aligned}$$

### Question 3

- (a) XYZ Ltd. incorporated on 1st April, 2023 issued a prospectus inviting applications for 5,00,000 equity shares of ₹ 10 each. The whole issue was fully underwritten by K, B, D, and M as follows :

K-2,00,000 Shares,  
B-1,50,000 Shares,  
D-1,00,000 Shares,  
M-50,000 Shares

The applications were received for 4,50,000 shares of which marked applications were as follows :

K-2,20,000 Shares,  
B-90,000 Shares,  
D-1,10,000 Shares,  
M-10,000.

Calculate the liability of individual underwriters

**(5 marks)**

- (b) On 1st April, 2022, the following balances were extracted from the ledger of X Limited :

	(₹)
(i) 10% redeemable preference share capital amount 5,000 shares of ₹ 100 each, fully called up	5,00,000
(ii) Securities premium account	14,000
(iii) General Reserve	1,60,000
(iv) Profit and loss account	1,18,540

The company redeemed all the preference shares at a premium of 5% and for the purpose, it issued equity shares of ₹ 10 each at a premium of ₹ 1 for such an amount as was necessary for the purpose after utilizing the available profits to the maximum possible extent.

You are required to pass the necessary journal entries for above mentioned transactions.

**(5 marks)**

(c) *The Summary Balance Sheet of ABC Ltd. as on 31st March, 2023 read as under :*

<i>Liabilities</i>	<i>Amount</i>	<i>Assets</i>	<i>Amount</i>
	(₹)		(₹)
<i>Share Capital :</i>		<i>Freehold property</i>	<i>1,15,000</i>
<i>Authorized share Capital :</i>		<i>Stock</i>	<i>1,35,000</i>
<i>40,000 Equity Shares of</i>		<i>Trade receivables</i>	<i>75,000</i>
<i>₹ 10 each</i>	<i>4,00,000</i>	<i>Cash</i>	<i>30,000</i>
<i>Issued and Subscribed :</i>	<i>_____</i>	<i>Balance at Bank</i>	<i>2,00,000</i>
<i>20,000 Equity</i>			
<i>Shares of ₹ 10 each fully paid.</i>	<i>2,00,000</i>		
<i>Securities Premium</i>	<i>30,000</i>		
<i>Statement of Profit and Loss</i>	<i>90,000</i>		
<i>12% Debentures</i>	<i>1,20,000</i>		
<i>Trade payables</i>	<i>1,15,000</i>		
	<i>5,55,000</i>		<i>5,55,000</i>

*The Annual General Meeting of ABC Ltd., it was resolved that :*

*(i) To issue one bonus share for every four shares held.*

*(ii) To repay the debentures at a premium of 3%.*

*Record the above transactions in the books of ABC Ltd. to meet the above resolutions.*

*(5 marks)*

**Answer 3(a)**

**Statement showing underwriters liability**

<i>Particular</i>	<i>K</i>	<i>B</i>	<i>D</i>	<i>M</i>
<i>Gross Liability:</i>	<i>200000</i>	<i>150000</i>	<i>100000</i>	<i>50000</i>
<i>Less : Unmarked application allocated in the ratio of 4:3:2:1 (450000 - 430000)</i>	<i>(8000)</i>	<i>(6000)</i>	<i>(4000)</i>	<i>(2000)</i>
	<i>192000</i>	<i>144000</i>	<i>96000</i>	<i>48000</i>
<i>Less : Marked application</i>	<i>220000</i>	<i>90000</i>	<i>110000</i>	<i>10000</i>
	<i>-28000</i>	<i>54000</i>	<i>-14000</i>	<i>38000</i>
<i>Less: On surplus of K &amp; D allocated to B &amp; M in the ratio of 3:1</i>	<i>+28000</i>	<i>-31500</i>	<i>+14000</i>	<i>-10500</i>
<b>Net Liability</b>	<b>NIL</b>	<b>22500</b>	<b>NIL</b>	<b>27500</b>

**Alternate Answer 3(a)****Statement showing underwriters liability**

<i>Particular</i>	<i>K</i>	<i>B</i>	<i>D</i>	<i>M</i>
Gross Liability:	200000	150000	100000	50000
Less : Marked application	(220000)	(90000)	(110000)	(10000)
	(20000)	60000	(10000)	40000
Less: On surplus of K & D allocated to B & M in the ratio of 3:1	20000	(22500)	10000	(7500)
Less: Unmarked application allocated to B & M in the ratio of 3:1 (450000 - 430000)	-	(15000)	-	(5000)
<b>Net Liability</b>	<b>NIL</b>	<b>22500</b>	<b>NIL</b>	<b>27500</b>

**Answer 3(b)**

<i>Date</i>	<i>Particular</i>	<i>L.F.</i>	<i>Amount Dr. (Rs.)</i>	<i>Amount Cr. (Rs.)</i>
	Bank A/c Dr. To Equity share capital A/c To Securities premium A/c (Allotment of 22,146 equity shares of Rs. 10 each at a premium of Rs. 1 Per share)		2,43,606	2,21,460 22,146
	Securities premium A/c / P&L Dr. To Premium on redemption of Preference shares A/c (Utilization of securities premium account for meeting the premium payable on redemption of preference shares)		25,000	25,000
	General reserve A/c Dr. Profit and loss A/c Dr. To Capital redemption reserve account (Creation of capital redemption reserve account out of divisible profits for redemption of preference shares.)		1,60,000 1,18,540	2,78,540
	10% redeemable pref. share capital A/c Dr. Premium on redemption of pref. shares A/c Dr.		5,00,000 25,000	

	To Preference shareholders A/c (Amount payable to preference shareholders on redemption of preference shares at a premium of 5%)			5,25,000
	Preference shareholder's A/c Dr. To Bank A/c (Payment made to preference shareholders to redeem all the preference shares at a premium of 5%)		5,25,000	5,25,000

**Working Note:**

Divisible profits available = Rs 1,60,000 + 1,18,540 = Rs. 2,78,540

Face value of the Preference share to be redeemed = Rs. 5,00,000

Minimum amount of new issue = Rs. 5,00,000 - Rs. 2,78,540 = Rs 2,21,460

Securities premium to be received = 10% of Rs. 2,21,460 = Rs. 22,146.

Total securities premium Rs. 14,000 + Rs 22,146 = 36,146

Premium payable on redemption of preference shares Rs.  $\frac{5}{100} \times 5,00,000 =$  Rs. 25,000

As the total share premium after new issue would be sufficient to take care of the premium Payable on redemption of preference shares, the company can proceed to redeem the preference shares by issuing 22,146 new equity shares of rupees 10 each.

**Answer 3(c)****Journal of ABC Ltd. as on 31<sup>st</sup> March, 2023**

<i>Particular</i>		<i>L.F.</i>	<i>Amount Dr.(Rs.)</i>	<i>Amount Cr.(Rs.)</i>
Securities Premium A/c	Dr.		30,000	
P&L A/c	Dr.		20,000	
To Bonus to Shareholders A/c (Amount transferred for issue of bonus shares to existing shareholders in the ratio of 1:4)				50,000
Bonus to Shareholders A/c	Dr.		50,000	
To Equity Share Capital A/c (Issue of bonus shares in the ratio of 1:4)				50,000
12% Debentures A/c	Dr.		1,20,000	
Premium Payable on Redemption of deb. A/c @ 3%	Dr.		3,600	
To Debenture holders A/c (Amount payable to debentures holders)				1,23,600

P&L A/c	Dr.		3,600	
To Premium Payable on Redemption of deb. A/c (Premium payable on redemption charged to surplus A/c)				3,600
Debenture holders A/c	Dr.		1,23,600	
To Bank A/c (Amount paid to debenture holders on redemption)				1,23,600

(Attempt all parts of either Q. No. 4 or 4A)

#### Question 4

- (a) On 31st March, 2023, H Ltd. has 20,000 shares out of 25,000 equity shares issued by S Ltd. H Ltd. acquired these shares in S Ltd. in the following manner :

Date of Acquisition	% of Shares Acquired
01st April, 2022	25%
01st October, 2022	37.5%
01st January, 2023	37.5%

On 31st March, 2022, the balance sheet of S Ltd. exhibited equity share capital of ₹ 2,50,000 (in ₹ 10 shares) and reserves and surplus of ₹ 1,25,000. During the year 2022-23, net profit earned by the company was ₹ 50,000, that was distributed evenly throughout the year. Amount of Reserves and Surplus on 31st March, 2023 stood at ₹1,75,000.

Ascertain the share of parent company in profits of S Ltd. on the dates of acquisition of these shares.

(5 marks)

- (b) From the following details, calculate value of Goodwill/Capital Reserve and Minority Interest that will reflect in consolidated Balance Sheet on 31<sup>st</sup> March, 2023 :

#### Summarized Balance Sheets as on 31<sup>st</sup> March, 2023

Liabilities	H.Ltd.(₹)	S.Ltd.(₹)	Assets	H.Ltd.(₹)	S.Ltd.(₹)
Share Capital (₹ 100 shares)	10,00,000	4,00,000	Sundry Assets	20,00,000	10,00,000
Profit and Loss	6,00,000	4,00,000	3000 shares in S Ltd. (01.04.22)	7,00,000	—
General Reserve	2,00,000	.....			
Liabilities	9,00,000	2,00,000			
Total	27,00,000	10,00,000	Total	27,00,000	10,00,000

Balance Sheet of S Ltd. on 31st March, 2022 exhibited profit of ₹ 1,00,000 and general reserve of ₹ 60,000.

(5 marks)

- (c) From the following summary of bank account of X. Ltd., prepare Cash Flow Statement for the year ended 31st March, 2023 :

**Summary of Bank Account for the year ended 31.3.2023**

Particulars	Amount in ₹ in lakh	Particulars	Amount in ₹ in lakh
To Balance b/d	50	By Payments to Suppliers	2,000
To Issue of Equity Shares	300	By Purchase of Fixed Assets	200
To Receipts from Customers	2,800	By Overhead Expenses	200
To Sales of Fixed Assets	100	By Wages and Salaries	100
		By Income Tax	250
		By Dividend	50
		By Repayment of Bank Loan	300
		By Balance c/d	150
<b>Total</b>	<b>3,250</b>	<b>Total</b>	<b>3,250</b>

Assume that the company does not have any cash and cash equivalents and there were NIL cash transaction.

(5 marks)

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

**Question 4A**

- (i) "The three golden rules of accounting are the very foundation of double entry system of financial accounting." Elucidate.
- (ii) What is meant by Extensible Business Reporting Language (XBRL) ? How does it work?
- (iii) What is the need of convergence of Accounting Standard with IFRS in India ?

(5 marks each)

**Answer 4(a)**

Calculation of share of H Ltd. in profits of S Ltd. on the dates of acquisition of shares.

**On 01.04.2022**

Reserves and Surplus: Rs. 1,25,000

Shares acquired by H Ltd. on 01.04.22 =  $20000 \times \frac{25}{100}$  = 5,000 shares

Proportionate holding of H Ltd. in S Ltd. =  $\frac{5000}{25000} \times 100$  = 20%

Share of H Ltd. in profit on 01.04.22 =  $1,25,000 \times \frac{20}{100}$  = 25,000

**On 01.10.2022**

Reserves and Surplus on 01.04.22: = Rs. 1,25,000

Profit earned during 2022-23: Rs. 50,000

Proportionate profit up to 0.1.10.22 (6 months) =  $50,000 \times \frac{6}{12}$  = Rs. 25,000

= Rs. 1,50,000

Profit for distribution

Shares freshly acquired by H Ltd.: $20,000 * 37.5/100$	= 7500 shares
Proportion of freshly acquired share in S Ltd. = $7,500/25,000 * 100$	= 30%
Total share acquired by H Ltd. in S Ltd = $20\%+30\%$	= 50%
Share of H Ltd. in profit on 1/10/2022= $150000*50\%$	= Rs. 75000

**On 01.01.2023**

Reserves and Surplus on 01.04.2022	= Rs. 1,25,000
Profit earned during 2022-23	= Rs. 50,000
Proportionate profit up to 01.01.23 (9 months) = $50,000 * 9/12$	<u>Rs. 37,500</u>
	Rs. 1,62,500

Profit for distribution

Shares freshly acquired by H Ltd.: $20,000 * 37.5/100$	= 7500 shares
Proportion of freshly acquired share in S Ltd. = $7,500 / 25,000 * 100$	= 30%
Total Share of H Ltd. in S Ltd. on 1/1/23= $50\%+30\%$	= 80%
Share of H Ltd. in profits on 1/1/23 = $162500*80\%$	= 130000

**Answer 4(b)**

(i) Calculation of Goodwill:

Cost of Investment in shares:	Rs. 7,00,000
Less: Value of H Ltd.'s equity on date of acquisition:	(Rs. 4,20,000)
Value of Goodwill	Rs. 2,80,000
Calculation of Value of H Ltd.'s equity on date of acquisition:	
Proportionate holding of H Ltd. in S Ltd. = $3000/4000 * 100$	= 75%
Face Value of shares = $3000 * 100$	= 3,00,000
Share in pre-acquisition profit = $1,00,000 * 75/100$	= 75,000
Share in pre-acquisition reserves = $60,000 * 75/100$	<u>= 45,000</u>
	Rs. 4,20,000

(ii) Calculation of Minority Interest

Nominal Value of Equity Shares held by Minority Shareholders = $1000 * 100$	= 100000
Add : Share in pre-acquisition profits and reserves $(100000+60000) * 25 / 100$	= 40000
Add : Share in post-acquisition profits $(400000-160000) * 25 / 100$	= 60000
	= Rs. 200000

**Answer 4(c)****Cash Flow Statement of X Ltd. for the year ended 31<sup>st</sup> March, 2023**

<i>Particulars</i>	<i>Amount (in Lakhs)</i>	<i>Amount (in Lakhs)</i>
(A) Cash Flow from Operating Activities:		
Cash receipts from customers	2800	
Less : Cash paid to suppliers	(2000)	
Overhead Expenses	(200)	
Wages and Salaries	(100)	
Cash Generated from Operations		500
Less : Income tax paid		(250)
Net Cash Flow from Operating Activities. (a)		250
(B) Cash Flow from Investing Activities:		
Purchases of Fixed Assets	(200)	
Proceeds from Sale of Fixed Assets	100	
Net Cash used in Investing Activities (b)		(100)
(C) Cash Flow from Financing Activities:		
Issue of Equity Shares	300	
Repayment of Bank Loan	(300)	
Dividend paid	(50)	
Net Cash used in Financing Activities (c)		(50)
Net Increase in cash and cash equivalents (a+b+c)		100
Add: Cash and cash equivalents at the beginning of the period		50
<b>Cash and cash equivalents at the end of the period</b>		<b>150</b>
<i>(Note: The figures in brackets show cash out flow)</i>		

**Answer 4A(i)**

The three golden rules of accounting are the very foundation of double entry system of financial accounting. This statement underlines the pivotal role played by golden rules of accounting in double-entry accounting process. Double Entry System of accounting actually classifies all the accounts opened in books under three broad categories, which are as follows:

1. Personal Accounts: Accounts of Natural, Artificial and Representative Persons
2. Real Accounts: Accounts of Things and Properties, and



The above factures highlight the need for convergence as well. Each county has its own set of rules and regulations for accounting and financial reporting Translation and re-instatement are of utmost importance in the world that is rapidly globalizing in all ways. Further, international analyst and investors would like to compare financial statements based on similar accounting standards and this has led to the growing support for internationally accepted set of accounting standards for cross border fillings. The harmonizing of financial reporting around the world would also help to raise the confidence of investors generally in the information they are using to make their decisions and assess their risks.

A strong need has been felt by legislation to bring about uniformity, rationalization, comparability transparency and adaptability in financial statement across the globe. Having a multiplicity of accounting standard around the world is against the public interest. If accounting for the same events and information produces different reported numbers depending on the system of standards that are being used, it is self-evident that accounting will be increasingly discredited in the eyes of those using the numbers. It creates confusion, encourages error and facilitates fraud and the cure for these is to have single set of global standards of the highest quality set in the interest of public.

## PART II

### Question 5

*XYZ Ltd. is a company manufacturing standardized chandeliers. The segment they deal in is more or less an oligopolistic kind of market with mediocre market potential. The demand of their product had been wavering in past, but owing to increasing economic level of middle class in India, the board of directors is confident of brighter days in future. On 1st April, 2023, the board of directors of the company is desirous of knowing the amount of working capital that will be required to meet the planned level of operations during the year 2023-24. Following details have been provided in this regard :*

<i>Issued share capital :</i>	<i>₹ 2 Crore</i>
<i>10% Debentures</i>	<i>₹ 50 Lakh</i>
<i>Fixed Assets (1st April, 2023)</i>	<i>₹ 1.25 Crore</i>

*Production and sales during the year 2023-24 is expected to average out to 500 units per month. During the previous year, the ratios of cost to selling price, which are also likely to be maintained in current year as well, were as follows :*

<i>Raw Materials :</i>	<i>60%</i>
<i>Direct Wages</i>	<i>10%</i>
<i>Overheads :</i>	<i>20%</i>

*Following additional information has been provided in this regard :*

- (1) Raw materials and components are expected to remain in store for an average period of two months before being issued to assembly and production.*
- (2) Each unit of product is expected to be in process for 15 days.*
- (3) Finished goods stay in warehouse for an average period of 1 month before being dispatches to customers.*
- (4) Suppliers of raw material components extend an average credit of 1.5 month.*
- (5) 80% sales are credit and though credit extended to customers is two months, average credit collection period is 75 days.*
- (6) On an average, overheads of 2 weeks remain outstanding.*

- (7) Selling price per unit is ₹ 5,000.
- (8) Work-in-progress, cost involves 100% of material and 50% of labour and overheads.
- (9) Sundry debtors to be valued at cash cost. Entire overhead cost is assumed to be cash cost. (10) One year is equal to 360 days or 52 weeks.
- (11) Assuming production and sales follow a constant pattern. You are required to :
- (a) Prepare an estimate of working capital required by the company for the ensuing year. Add 10% of your calculated figure for contingencies. (10 marks)
- (b) Prepare a forecast of Profit/Loss account for the ensuing year. (5 marks)
- (c) Prepare a forecasted Balance Sheet at the end of ensuing year. (5 marks)

**Answer 5(a)**

<b>Statement of Estimated Working Capital by XYZ Ltd.</b>			
<b>Particulars</b>			<b>Amount (Rs.)</b>
<b>Current Assets:</b>			
Inventory			
Raw material	$6000 \times 3000 \times 2/12$	30,00,000	
Work-in Process	$6000 \times (3000 + 250 + 500) \times 15/360$	9,37,500	
Finished Goods	$6000 \times (3000 + 500 + 1000) \times 1/12$	22,50,000	61,87,500
Sundry Debtor	$(6000 \times 80\%) \times (3000 + 500 + 1000) \times 75/360$	45,00,000	45,00,000
	<b>Total Current Assets</b>		<b>1,06,87,500</b>
<b>Less : Current Liabilities</b>			
Sundry Creditors	$6000 \times 3000 \times 1.5/12$	22,50,000	(22,50,000)
Outstanding Overheads	$6000 \times 1000 \times 2/52$	2,30,769	(2,30,769)
	<b>Balance</b>		<b>82,06,731</b>
	<b>Add : 10% for contingencies</b>		<b>8,20,673</b>
	<b>ESTIMATED WORKING CAPITAL REQUIRED</b>		<b>90,27,404</b>

**Working Notes**

- (i) **Annual Production**=  $500 \times 12 = 6000$  Units

- (ii) **Per unit costs:** Raw material= Rs.5000 x 60%= Rs.3000: Direct Wages= 5000x 10%= Rs. 500 and Overhead= 5000x20%= Rs 1000.

**Answer 5(b)**

**Forecasted Profit/ Loss account of XYZ Ltd.**

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Particular</i>	<i>Amount (Rs.)</i>
To Material and Components	1,80,00,000	By sales	3,00,00,000
To Direct Labour	30,00,000		
To Overheads	60,00,000		
To Gross Profit c/d.	30,00,000		
<b>Total</b>	<b>3,00,00,000</b>	<b>Total</b>	<b>3,00,00,000</b>
To Interest on debentures	5,00,000	By Gross Profit b/d.	30,00,000
To Net Profit c/d.	25,00,000		
<b>Total</b>	<b>3,00,00,000</b>	<b>Total</b>	<b>3,00,00,000</b>

**Answer 5(c)**

**Forecasted Balance Sheet of XYZ Ltd.**

<i>Liabilities</i>	<i>Amount (Rs.)</i>	<i>Assets</i>	<i>Amount (Rs.)</i>
Share Capital	2,00,00,000	Fixed Assets	1,25,00,000
Profit /Loss a/c.	25,00,000	<b>Net Current Assets</b>	1,50,00,000
<b>10% Debenture</b>	<b>50,00,000</b>	Inventory:	
		Raw Material-	
		30,00,000	
		WIP - 9,37,500	
		Finish Goods - 22,50,000	

		Total Inventory- 61,87,500 Add : Debtors – 50,00,000 Add : Cash / Bank – 62,93,269#	
		Total CA: 1,74,80,769 Less CL: Creditors – (22,50,000) O/S Overheads-(2,30,769)	
<b>Total</b>	<b>2,75,00,000</b>	<b>Total</b>	<b>2,75,00,000</b>

- Debtors on selling price =  $(6000 \times 80\%) \times 5,000 \times 75/360 = 50,00,000$**
- # Balancing figure**  
Cash / Bank Balance = Total Current Assets – Total Inventory – Debtors  
Cash / Bank Balance = 1,74,80,769 - 61,87,500 - 50,00,000 = Rs. 62,93,269
- In case if student show creditors and O/S overheads in liability side in that case total of balance sheet will be **Rs.2,99,80,769.**
- Candidates solving the above question by any format, i.e., vertical or horizontal may be awarded marks.
- Abbreviations:**  
CA – Current Assets  
CL – Current Liabilities  
O/S Overheads – Outstanding Overheads

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

#### Question 6

- (a) ABC Ltd. provides the following information regarding the cost of the product. Direct materials ₹ 20,000 Direct Wages ₹ 16,000 Variable Factory Overhead : 25% of wages Variable Administration Overhead : 10% of the factory cost Variable Selling and Distribution Overhead : ₹ 4 per unit Fixed Overhead : ₹ 8,000 Units sold 1,000 @ ₹ 64 per unit From the above data of ABC Ltd., you are required to calculate :
- Profit-Volume Ratio
  - Break-Even Point
  - Margin of Safety
  - Profit.

(5 marks)

- (b) Equipment A has a cost of ₹ 75,000 and net cash flow of ₹ 20,000 per year for six years. A substitute equipment B would cost ₹ 50,000 and generate net cash flow of ₹ 14,000

per year for six years. The required rate of return of both equipments is 11 per cent. Calculate :

- Net Present Value and Profitability Index for the both equipments.
- Which equipment should be accepted and why ?

Present Values of Rupee 1 at 11% are :

Year	1	2	3	4	5	6
PV of ₹ 1	0.901	0.812	0.731	0.659	0.593	0.535

(5 marks)

- (c) The following is an extract from the financial statement of XYZ Ltd :

	(₹ in lakh)	(₹ in lakh)
Operating Profit	105	
Less : Interest on debentures	33	72
Less : Income Tax (30%)		21.6
Net profit		50.4
Equity share capital (shares of 10 each)	200	
Reserves and surplus	100	
15% non-convertible debentures (of ₹ 100 each)	220	520

The market price per equity share is ₹ 12 and per debenture ₹ 93.75. Calculate :

- (i) EPS
  - (ii) Percentage cost of capital to the company for the debenture funds and the equity.
- (5 marks)
- (d) RST Ltd. has a capital of ₹ 10,00,000 in equity shares of ₹ 100 each. The shares are currently quoted at par. The company proposes to declare a dividend of ₹10 per share at the end of the current financial year. The capitalization rate for the risk class of which the company belongs is 12%.

You are requested to calculate market price of the share at the end of the year, if

- (i) Dividend is not declared.
- (ii) Dividend is declared.
- (iii) Assuming that the company pays the dividend and has net profits of ₹5,00,000 and makes new investments of ₹ 10,00,000 during the period, how many new shares must be issued ? Use the MM model.

(5 marks)

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

### Question 6A

- (i) What do you mean by Aroon Indicator ? Explain.
- (ii) Explain Hamada Equation and also calculate Hamada coefficient using following information. A company has a debt to equity ratio of 0.65 : 1.00, a tax rate of 35% and an unlevered beta of 0.80.

- (iii) What is meant by annuity due and ordinary annuity ?  
 (iv) Briefly explain the emerging roles of Financial Manager.

(5 marks each)

**Answer 6(a)**

**Statement of Marginal Cost**

Direct Material	20,000
Direct Wages	16,000
Prime Cost	36,000
Variable Factory Overhead (25% of wages)	4,000
Marginal Factory Cost	40,000
Variable Administrative Overhead (10% of 40,000)	4,000
Marginal Cost of Production	44,000
Variable Selling & Distribution Overhead (1,000 x 4)	4,000
Total Marginal Cost	48,000
Sales (1,000x64)	64,000

**Calculation of Ratio**

- (i)  $P/V \text{ Ratio} = \frac{S-V}{S} \times 100 = \frac{64,000-48,000}{64,000} = 25\%$   
 (ii)  $B.E.P. = \frac{\text{Fixed Costs}}{P/V \text{ Ratio}} = \frac{8,000}{25\%} = \text{Rs } 32,000$   
 (iii)  $\text{Margin of Safety} = \text{Sales} - B.E.P. = 64,000 - 32,000 = \text{Rs } 32,000$   
 (iv)  $\text{Profit} = (S \times P/V) - F = (64,000 \times 25\%) - 8,000 = \text{Rs } 8,000$

**Answer 6(b)**

**Equipment A :**

$$\begin{aligned} NPV &= 20,000 \times (PVA_{F6, 0.11}) - 75,000 \\ &= 20,000 \times 4.231 - 75,000 \\ &= 84,620 - 75,000 \\ &= \text{Rs. } 9,620 \end{aligned}$$

$$\text{Profitability Index} = \frac{\text{Present Value of Cash Inflows}}{\text{Initial Cost}} = \frac{84,620}{75,000} = 1.128$$

**Equipment B:**

$$\begin{aligned} NPV &= 14,000 \times PVA_{F6, 0.11} - 50,000 \\ &= 14,000 \times 4.231 - 50,000 \\ &= 59,234 - 50,000 \\ &= \text{Rs } 9,234 \end{aligned}$$

$$\text{Profitability Index} = \frac{\text{Present Value of Cash Inflows}}{\text{Initial Cost}}$$

$$\frac{59,234}{50,000} = 1.185$$

**As per NPV project A is to be preferred over project B. But as per PI technique Project B is to be preferred. The NPV decision should be preferred unless there is a capital rationing. If the firm has funds of Rs. 75,000 to invest, then project A should be adopted. This will result in increase in shareholders wealth to the extent of Rs. 9,620 against project B which will increase the wealth only by Rs. 9,234.**

### Answer 6(c)

i) Calculation of earnings per share:

$$\text{Earnings per share (EPS)} = \frac{\text{Profit after tax}}{\text{No. of equity shares}}$$

$$5040000/2000000 = \text{Rs. } 2.52$$

ii) Computation of Percentage Cost of Capital:

(a) Cost of Equity Capital = Cost of Equity (Ke) = D / MP

$$\text{Ke (\%)} = 2.52/12 \times 100 = 21\%$$

(b) Cost of Debenture Funds:	At Book Value (Rs in lakh)	At Market Price (Rs in lakh)
Value of 15% Debentures	220.00	206.25
Interest Cost for the year	33.00	33.00
Less: Tax at 30%	9.90	9.90
Interest cost after tax	23.10	23.10
Cost of Debenture Fund (%)	$23.10/220 \times 100$ =10.50%	$23.10/206.25 \times 100$ =11.20%

### Answer 6(d)

Cost of Equity (Ke) 12% ; Number of shares in the beginning (n) 10,000 Current Market Price (P0) Rs.100 ; Net Profit (E) Rs. 5, 00,000

Expected Dividend Rs.10 per share Investment (I) Rs.10, 00,000

Computation of market price per share, when:

(i) No dividend is declared:

$$P_0 = P_1 + D / 1 + K_e$$

$$100 = P_1 + 0 / 1 + 0.12$$

$$P_1 = 112 - 0 = \text{Rs } 112$$

(ii) Dividend is declared:

$$100 = P_1 + 10 / 1 + 0.12$$

$$P_1 = 112 - 10 = \text{Rs. } 102$$

(iii) Calculation of funds required for investment: Using MM model Earning 5, 00,000

Dividend distributed 1, 00,000

Fund available for investment 4, 00,000

Total Investment 10, 00,000

Balance Funds required 10, 00,000 - 4, 00,000 = Rs. 6, 00,000 No. of shares — Funds required/  
Price at end (P1)

$$\Delta n = 6, 00,000 / 102 = 5882.35 \text{ or } 5883 \text{ Shares.}$$

**Answer 6A(i)****Aroon Indicator:**

The Aroon indicator is a technical indicator that is used to identify trend changes in the price of an asset, as well as the strength of that trend. In essence, the indicator measures the time between highs and the time between lows over a time period. The idea is that strong uptrends will regularly see new highs, and strong downtrends will regularly see new lows. The indicator signals when this is happening, and when it isn't.

The indicator consists of the "Aroon up" line, which measures the strength of the uptrend, and the "Aroon down" line, which measures the strength of the downtrend. The Aroon indicator was developed by Tushar Chande in 1995.

Formulas of the Aroon Indicator:

Aroon up = 25-Period Since 25 period High / 25 \* 100

Aroon down = 25-Period Since 25 period low / 25 \* 100

**Answer 6A(ii)**

The Hamada equation is the method of analyzing a firm's cost of capital as it uses additional financial leverage. It draws upon the Modigliani-Miller theorem on capital structure. The higher the beta equation, the higher the risk associated with the firm.

$$\beta_L = \beta_U [1 + (1 - t) (D/E)]$$

$$= 0.80 [1 + (1 - .35) (.65)]$$

1.138, Hence, the leveraged beta is 1.138.

It means that the financial leverage of the company increases the overall risk by the beta amount of 0.338 = (1.138 - .80). Therefore, as the beta of the coefficient rises, the associated risk of having higher debt also rises.

**Answer 6A(iii)*****Annuity Due vs. Ordinary Annuity***

1. *Payments*: The major difference between annuity due and the more popular ordinary annuity is that payments for an ordinary annuity are made at the end of the period, as opposed to annuity due payments made at the start of each period/interval. Ordinary annuity payments include loan repayments, mortgage payments, bond interest payments, and dividend payments.
2. *Present value*: Another difference is that the present value of an annuity due is higher than one for an ordinary annuity. It is a result of the time value of money principle, as annuity due payments are received earlier.

Hence, if you are set to make ordinary annuity payments, you will benefit from getting an ordinary annuity by holding onto your money longer (for the interval). Conversely, if you are set to receive annuity due payments, you will benefit, as you will be able to receive your money (value) sooner. In any annuity due, each payment is discounted one less period in contrast to a similar ordinary annuity.

**Answer 6A(iv)**

The responsibilities of the financial manager are linked to the goal of ensuring liquidity, profitability or both and is also related to the management of assets and funds of any business enterprise. When the Financial Manager is involved in management of asset, he is performing the role of the decision-maker and when he is managing funds, he is performing the staff

function. In the light of different responsibilities of the financial manager, he performs mainly the following duties:

1. Forecasting of cash flow
2. Raisins funds
3. Managing the flow of internal funds
4. To facilitate cost control
5. To facilitate pricing of product
6. Forecasting profit
7. Measuring required return
8. Managing assets
9. Managing funds

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