

# **GUIDELINE ANSWERS**

## **EXECUTIVE PROGRAMME (NEW SYLLABUS 2022)**

**DECEMBER 2023**

**GROUP 2**



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

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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

## **C O N T E N T S**

	<i>Page</i>
<b>GROUP 2</b>	
1. Capital Market & Securities Laws	... 1
2. Economic, Commercial and Intellectual Property Laws	... 31
3. Tax Laws & Practice	... 47

**EXECUTIVE PROGRAMME EXAMINATION**  
**DECEMBER 2023**  
**CAPITAL MARKET & SECURITIES LAWS**

*Time allowed : 3 hours*

*Maximum marks : 100*

*Total number of questions : 6*

**NOTE :** 1. Answer ALL Questions.

2. All working notes should be shown distinctly.

**PART A**

**Question 1**

(a) *CASE-JVRS Limited :*

*JVRS Ltd., an Indian Public Limited Company, is listed on BSE. The company was incorporated in 1991 and is leading manufacturer and marketer of dairy based branded foods in India. The company at the beginning focussing on only collection and distribution of milk. The company later on expanded its business and gained a reasonable market and company started offering diverse range of dairy based products which included fresh milk, ice cream, butter, mild cheese, ghee, milk powder etc. The company decided to raise the fund through offer for subscription of ₹10 crore and through prospectus of ₹5 crore in order to diversify the business.*

*Mr. J, one of the shareholder having 200 shares of the company had applied for rematerialisation of shares on January 12, 2023, which he bought through screen based trading. J wanted to trade the 200 shares on January 15, 2023 but he was unable to do so. The bonus shares were issued by the company on January 05, 2023. Mr. J has opened another Demat account on January 13, 2023.*

*Mr. V, one of the directors of the company, has felt that the market price of the share was steadily rising and is planning to take over another similar company. Due to this fact he knew that the share price of the company would increase after the announcement of takeover. Mr. V called one of his friends Mr. C and asked him to invest ₹2 crores in the shares of the company and promised that he will have surely capital gain. The share price went up and he earned profit of ₹50 lakh and it was shared equally with Mr. V. On regular inspection and by conducting enquiries of the brokers involved, the Securities and Exchange Board of India was able to detect this irregularity and imposed maximum penalty on Mr. V.*

*The company in 2023 diversified its business in share trading and hired Mr. R as an account executive and was participating along with other new brokers in a company training program, the objectives of which were to familiarise the participants with the procedures of the brokerage house, developing skills of share trading and provide an introduction to investment analysis and Management.*

*Before joining the firm, he was engaged in brokerage services. He graduated*

*from a reputed University in India in Sociology and History and has not studied any business course due to lack of business background. Mr. R was interested in the investment training sessions. At the first meeting on investment analysis and management, the session leaders dealt with the importance of diversification and connoted that investors should make informed decision before investing in the shares of the company. He opined that the account executive dealt with entirely too much time on accounting treatment of individual securities.*

*Mr. R was able to grasp the general points brought out in the initial session but he realised that there are lot of the things left which he has to learn in detail. The session leader has used many unfamiliar terms like beta, different types of risks, coefficient of correlation. At the end of the particular lecture, Mr. R asked the instructor to provide some material to learn the terminology. The instructor has given him reading material as well as short exercise and examples to familiarise him with the concept of risk-return and later on the instructor provided some cases based reading material related to investment management issues. The instructor has given the detailed material of BSE-SENSEX and NSE-NIFTY. The analysis of the stock prices of BSE and NSE was also provided to him in order to calculate the volatility both absolutely and relative to market. During the training session, the participants examined historical risk and return information and interrelationships between assets available in the equity market.*

*Read the case carefully and answer the following questions :*

*What do you mean by 'Screen based trading' ? When was it started ? How fund raising from offer for subscription is different from prospectus ? How the two securities market mentioned in the case are different from each other ? Elaborate.  
(5 marks)*

*(b) State the penalties against persons who might be found guilty of offences under section 23 of the Securities Contract (Regulation) Act, 1956.*

*(i) Any person who fails to maintain books of accounts or records, as per the listing agreement or conditions, or bye-laws of a recognised Stock Exchange.*

*(ii) If any issuer make an excess dematerialisation or delivery of unlisted securities.*

*(5 marks)*

*(c) (i) What is the objective for which SAT is established ?*

*(ii) State the composition of Securities Appellate Tribunal ?*

*(iii) Does a Civil Court have jurisdiction to entertain any suit in respect of any matter for which an Adjudicating Officer appointed under the SEBI Act ?*

*(iv) Mention the time period for filing an appeal with Supreme Court.*

*(v) Why are special courts established by the Central Government ?*

*(5 marks)*

- (d) *A startup working towards innovation of products, its turnover are 8, 10, 12, 15, 18 USD million for last 5 years since its incorporation. What is your opinion about eligibility of this SME to list on the recognised stock exchange in IFSC ?*

(5 marks)

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

**Screen based trading** : It is a form of trading that uses modern telecommunication and computer technology to combine information transmission with trading in financial markets. Investors, who are desirous of buying securities, purchase them through registered broker/sub-broker of the stock exchange.

Screen based trading has started since 1995.

Offer for subscription to securities to the public is a public offer. All public offers must be made through prospectus. Prospectus is the offer documents that is filed with the regulators like SEBI, RoC and stock exchanges when the company goes for a public issue.

#### **Difference between two securities market i.e. Primary and Secondary Market**

- Primary market is the market place for issuing fresh securities and the secondary market is the market place for trading already issued securities.
- Primary market is to raise fund whereas secondary market is for buying, selling, or dealing in already issued securities. Primary market includes issuance of new securities through Initial Public Offer (IPO) whereas secondary market includes the further trading of securities already offered to the public.
- The primary market is also known as new issue market / IPO Market and secondary market is known as After issue market.
- In primary market investors can purchase securities directly from the Company and in secondary market purchase and sale of securities is done by the investors among themselves.
- Primary market provides funds to new and old companies for their expansion and diversification whereas secondary market does not provide funding to companies.
- The parties to transactions are Company and Investors in primary market whereas Investors among themselves are parties in secondary market.
- Major Intermediaries in primary market is underwriter whereas in secondary market, Brokers are major intermediaries.
- In primary market, price is provided in the offer document /red herring prospectus whereas in secondary market price fluctuates i.e. depends on demand and supply forces.
- Fund gained from primary market becomes the capital of the company whereas Fund received from secondary market becomes income of investors.

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**Answer 1(b)**

In accordance with Section 23 of the Securities Contracts (Regulation) Act, 1956, any person who might be found guilty of offences under section 23 of the Securities Contracts (Regulation) Act, 1956, shall, without prejudice to any award of penalty by the Adjudicating Officer or the SEBI under the Securities Contracts (Regulation) Act, 1956, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty five crore rupees, or with both.

- i. According to Section 23A (b) of the Securities Contracts (Regulation) Act, 1956

**Contravention** : Any person who fails to maintain books of account or records, as per the listing agreement or conditions, or bye laws of a recognized stock exchange.

**Penalty** : Penalty shall be not less than 1 lakh rupees but may extend to 1 lakh rupees for each day during which such failure continues, subject to a maximum of 1 crore rupees.

- ii. According to Section 23 F of the Securities Contracts (Regulation) Act, 1956

**Contravention** : If any issuer makes an excess dematerialization or delivery of unlisted securities.

**Penalty** : Penalty shall not be less than 5 lakh rupees which may extend to 25 crores rupees.

**Answer 1(c)**

- i. Securities Appellate Tribunal (SAT) was established to consider appeal against order of the SEBI or by an order made by an adjudicating officer or by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority.
- ii. According to Section 15L of the SEBI Act, 1992, the Securities Appellate Tribunal shall consist of a Presiding Officer and such number of Judicial Members and Technical Members as the Central Government may determine, by notification to exercise the powers and discharge the functions conferred on the Securities Appellate Tribunal under SEBI Act, 1992 or any other law for the time being in force.
- iii. Section 15Y of the SEBI Act, 1992 lays down that no civil court has jurisdiction to entertain any suit or proceeding in respect of any matter for which an Adjudication Officer has been appointed under the SEBI Act, 1992.
- iv. Section 15Z lays down that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.
- v. Special courts are established by the Central Government under Section 26A of the SEBI Act, 1992 for providing speedy trial of offences.

**Answer 1(d)**

The start-up fulfilling the following criteria shall be eligible to list on the recognised stock exchanges in IFSC:

- a. The offer document of the company should be filed within a period of ten years from the date of incorporation/ registration.
- b. The annual turnover of the company for any of the financial years since incorporation should not have exceeded USD 20 Million.
- c. The company is working towards innovation, development or improvement of products or processes or services, or it is a scalable business model with a high potential of employment generation or wealth creation.

In the given case, start-up fulfils the requirements of listing on the recognized stock exchange in IFSC as the turnover of the company are 8, 10, 12, 15, 18 USD Million for last five years since its incorporation which has not exceeded USD 20 Million in any financial year. Further, this start-up is working towards innovation of product and it is in existence for less than 10 years since its incorporation. Therefore, a start-up fulfils the eligibility conditions to list on the recognized stock exchange in IFSC.

**Alternate Answer 1(d)**

A small and medium enterprise company shall be eligible to list its specified securities on a recognised stock exchange in an IFSC, with or without making a public offer, if the annual turnover of the company for any of the financial years since incorporation/ registration should not have exceeded USD 50 million.

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

**Question 2**

(a) *Jethana Ltd is a listed public sector company since 2014. The company has applied for listing of new securities to BSE. The company is having minimum public shareholding of 15% in 2018. As a company secretary advise the company with respect to following :*

- (i) *Whether the minimum public shareholding is as per Rule or it requires to be increased in due course of time.*
- (ii) *What is the provision of the Rule with regard to minimum public shareholding?*
- (iii) *When Central Government can exempt from any or all of the provisions of minimum shareholding.*
- (iv) *What is the rule 19(4) of Securities Contracts (Regulation) Rules, 1957 of application for listing of new securities ?*

(5 marks)

(b) *Financial Market Intermediaries are service providers and are an integral part of any financial system. Elucidate and mention the primary market intermediaries and secondary market intermediaries. When the applications for grant of certificate of Financial Market Intermediaries are rejected ?*

(5 marks)

(c) *Why International Financial Services Centres have assumed prominence in the Financial Services ecosystem ? Do you consider any necessity of IFSC for domestic economy ? How ?*

(5 marks)

(d) *“Any person aggrieved by the order or decision of the recognised stock exchange or any other order made by the SEBI may prefer an appeal before this Securities Appellate Tribunal”. Explain the statement.*

(5 marks)

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

**Question 2A**

(i) *‘Private equity funds usually invest in more illiquid assets companies and as source of investment capital, private equity comes from High Net-worth individuals.’ Elucidate the statement and enumerate the term ‘high net-worth individuals’ and types of Private Equity.*

(ii) *Explain the procedure for making application and recognition of stock exchange.*

(iii) *What is the purpose of Informal Guidance ? Who are the persons for making a request for Informal Guidance ? What are forms in which the informal guidance is sought ? What is the time period within which the request may be disposed off by SEBI ?*

(iv) *“A depository interfaces with the investors through its agents called Depository Participants”. Discuss the statement and explain the characteristics of depository participants and how depository is different from custodian ?*

(5 marks each)

**Answer 2(a)**

(i) In terms of Rule 19A (1) of the Securities Contracts (Regulation) Rules, 1957, every listed public sector company which has public shareholding below twenty-five per cent. on the commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2018, shall increase its public shareholding to at least twenty-five per cent, within a period of 3 years from the date of such commencement, in the manner specified by the SEBI.

Jethana Ltd. is having minimum public shareholding of 15% in 2018 which requires to be increased within a period of 3 years from the date of such commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2018.

(ii) **Minimum public Shareholding** : Rule 19A (1) of the Securities Contracts (Regulation) Rules, 1957 stipulates that every listed company shall maintain public shareholding of at least twenty-five per-cent. Sub rule (2) provides that where the public shareholding in a listed company falls below twenty five per cent. at any time, such company shall bring the public shareholding to twenty five per cent. within a maximum period of 12 months from the date of such fall in the manner specified by the SEBI.

However, every listed public sector company whose public shareholding falls

below twenty five per-cent. at any time after the commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2018, shall increase its public shareholding to at least twenty five per-cent, within a period of 2 years from such fall, in the manner specified by the SEBI.

- (iii) The Central Government may, in public interest, exempt any listed entity in which the Central Government or State Government or public sector company, either individually or in any combination with other, hold directly or indirectly, majority of the shares or voting rights or control of such listed entity, from any or all of the provisions of rule 19A.
- (iv) Application for listing of new securities: Rule 19(4) of the Securities Contracts (Regulation) Rules, 1957 stipulates that an application for listing shall be necessary in respect of the following:
  - a. all new issues of any class or kind of securities of a company to be offered to the public.
  - b. all further issues of any class or kind of securities of a company if such class or kind of securities of the company are already listed on a recognised stock exchange.

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

Intermediaries are service providers and are an integral part of any financial system. SEBI regulates various intermediaries in the primary and secondary markets through its regulations for these respective intermediaries. SEBI has defined the role of each of the intermediary, the eligibility criteria for granting registration, their functions and responsibilities and the code of conduct to which they are bound. These regulations also empower SEBI to inspect the functioning of these intermediaries and to collect fees from them and to impose penalties on erring entities.

#### **Primary Market Intermediaries**

- Merchant Bankers
- Bankers to the Issue
- Registrars to an issue and share transfer agents
- Underwriters
- Debenture Trustees

#### **Secondary Market Intermediaries**

- Stock brokers
- Depository
- Share Transfer Agents

**Rejection of Application** : Any application of grant of certificate:-

- which is not complete in all respects and does not conform to the requirements in Form A and the requirements specified in the relevant regulation;
- which does not contain such additional information as required by the SEBI;

- which is incorrect, false or misleading in nature;
- where the applicant is not in compliance with the eligibility requirements as set out under the SEBI (Intermediaries) Regulations, 2008 or the relevant regulations;
- where the applicant is not a fit and proper person;
- where the principal officer does not have the requisite qualification or experience as required under the relevant regulations;

can be rejected by the SEBI for reasons to be recorded by the SEBI in writing.

However, the applicant has to be given an opportunity in writing to make good the deficiencies within the time specified by the SEBI, for the purpose.

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

Globally, IFSCs have assumed prominence in the financial services ecosystem primarily because of three reasons-

1. They have contributed enormously to the growth of international financial transactions,
2. These centres have played a pivotal role in accelerating the pace of financial globalization, and
3. These centres have played an invaluable role in accelerating the socio-economic growth of host countries.

In the last three decades, the world has witnessed unprecedented expansion in global trade and commerce. This global churn was primarily fuelled by the integration of developing countries, especially in Asia with the global financial system. These fundamental changes brought about a paradigm shift in the global economy and created huge demand for international financial services amongst developing countries.

### **Necessity of IFSC for domestic economy**

*Onshoring the offshore international financial services* : One of the fundamental factors which incentivized India to set up its own IFSC was the fact that as one of the largest and fastest growing major economies in the world, India could no longer afford to play a passive role in the international financial services ecosystem. India had been heavily relying on overseas financial centres for the purchase of international financial services. Therefore, GIFT-IFSC was set up to transform India from being an importer of international financial services to becoming self-sufficient as well as an exporter of international financial services. Thus, the vision was of “**onshoring the offshore international financial services**”.

*India's economic growth trajectory* : More significantly, a vibrant IFSC has the potential to act as a growth catalyst for domestic Indian economy which is striving to become a USD 5 Trillion economy. Services offered in an IFSC, including Banking, Asset Management, Insurance and Capital Markets attract huge amounts of global capital inflows, such inflows can be channelized for the social economic development of India as well as to meet the Sustainable Development Goals -2030. Therefore, the development of an IFSC is an imperative step in India's economic growth trajectory.

Another driving force for setting up an IFSC within the country was to allow bright young Indian talent especially in finance and information technology field to fully exhibit & showcase their talent and expertise, who hitherto, had to travel and work in overseas financial centres.

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

Section 23L of the Securities Contracts (Regulation) Act, 1956 stipulates that any person aggrieved, by the order or decision of the recognized stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India, may prefer an appeal before the Securities Appellate Tribunal.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed. However, the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer. The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

The appeal may be preferred before the Securities Appellate Tribunal as per the procedure laid down under the Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000.

Further, Section 15T of the SEBI Act, 1992 provides that, any person aggrieved, by an order of the SEBI or by an order made by an adjudicating officer may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

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

#### **Private equity**

Private equity is a type of equity (finance) and one of the asset classes who takes securities and debt in operating companies that are not publicly traded on a stock exchange. Private equity is essentially a way to invest in some assets that is not publicly traded, or to invest in a publicly traded asset with the intention of taking it private. As a source of investment capital, private equity comes from High Net-worth Individuals (HNI) & firms that purchase stakes in private companies or acquire control of public companies with plans to make them private & consequently delist from the stock exchange. Unlike stocks, mutual funds, and bonds, private equity funds usually invest in more illiquid assets companies.

#### **High Net-worth individuals**

HNIs or high net worth individuals is a class of individuals who are distinguished from other retail segment based on their net wealth, assets and investible surplus. While

there is no standard put forth for the classification, the definition of HNIs varies with the geographical area as well as financial markets and institutions.

### **Types of private equity**

Private equity investments can be divided into the following categories:

- *Leveraged Buyout (LBO)* : This refers to a strategy of making equity investments as part of a transaction in which a company, business unit or business assets is acquired from the current shareholders typically with the use of financial leverage. The companies involved in these type of transactions that are typically more mature and generate operating cash flows.
- *Venture Capital* : It is a broad sub-category of private equity that refers to equity investments made, typically in less mature companies, for the launch, early development, or expansion of a business.
- *Growth Capital* : This refers to equity investments, mostly minority investments, in the companies that are looking for capital to expand or restructure operations, enter new markets or finance a major acquisition without a change of control of the business.

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

#### **Application for recognition of stock exchange**

Section 3 of the Securities Contracts (Regulation) Act, 1956 lays down that any stock exchange, desirous of being recognized for the purposes of this Act may make an application in the prescribed manner to the Central Government.

Every application shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange and in particular to –

- (a) the governing body of such stock exchange, its constitution and powers of management and the manner in which its business is to be transacted;
- (b) the powers and duties of the office bearers of the stock exchange;
- (c) the admission into the stock exchange of various classes of members, the qualifications, for membership, and the exclusion, suspension, expulsion and re-admission of members therefrom or thereinto;
- (d) the procedure for the registration of partnerships as members of the stock exchange in cases where the rules provide for such membership; and the nomination and appointment of authorized representatives and clerks.

#### **Grant of recognition to stock exchange**

Section 4 of the Securities Contracts (Regulation) Act, 1956 lays down that if the Central Government is satisfied (powers are exercisable by SEBI also) after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require:

- (a) that the rules and bye-laws of a stock exchange applying for registration are in

conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;

- (b) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and
- (c) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange;

It may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.

The conditions which the Central Government (powers are exercisable by SEBI also) may prescribe for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to-

- (i) the qualifications for membership of stock exchanges;
- (ii) the manner in which contracts shall be entered into and enforced as between members;
- (iii) the representation of the Central Government on each of the stock exchange by such number of persons not exceeding three as the Central Government may nominate in this behalf; and
- (iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.

Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the stock exchange is situated, and such recognition shall have effect as from the date of its publication in the Gazette of India.

No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.

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

In the interests of better regulation of and orderly development of the Securities market, SEBI has issued SEBI (Informal Guidance) Scheme 2003 w.e.f. 24.06.2003. The following persons may make a request for informal Guidance under the scheme:

- (a) any intermediary registered with the SEBI.
- (b) any listed company.
- (c) any company which intends to get any of its securities listed and which has filed either a listing application with any stock exchange or a draft offer document with the SEBI or the Central Listing authority.

- (d) any mutual fund trustee company or asset management company.
- (e) any acquirer or prospective acquirer under the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997. [Now the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011]

The Guidance Scheme, further deals with various aspects such as the nature of request, fees to be accompanied along with request letter, disposal of requests, the SEBI's discretion not to respond certain types of requests and confidentiality of requests etc.

The informal guidance may be sought for and given in two forms:

- **No-action letters** : The SEBI indicates that the Department would or would not recommend any action under any Act, Rules, Regulations, Guidelines, Circulars or other legal provisions administered by SEBI to the Board if the proposed transaction described in a request is consummated.
- **Interpretive letters** : The SEBI provides an interpretation of a specific provision of any Act, Rules, Regulations, Guidelines, Circulars or other legal provision being administered by the SEBI in the context of a proposed transaction in securities or a specific factual situation.

The request seeking informal guidance should state that it is being made under this scheme and also state whether it is a request for a no-action letter or an interpretive letter and should be accompanied with prescribed fees and addressed to the concerned Department of the SEBI.

It should also describe the request, disclose and analyse all material facts and circumstances involved and mention all applicable legal provisions.

The SEBI may dispose off the request as early as possible and, in any case, not later than 60 days after the receipt of the request.

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

A depository interfaces with the investors through its agents called Depository Participants (DPs). If an investor wants to avail the services offered by the depository, the investor has to open an account with a DP. Just as a brokers act an agent of the investor at the Stock Exchange, a Depository Participant (DP) is the representative (agent) of the investor in the depository system providing the link between the Company and investor through the Depository. The Depository Participant maintains securities' account balances and intimates the status of holding to the account holder from time to time.

#### **Characteristics of a DP**

- Transmission requests/nomination
- Acts as an Agent of Depository
- Customer interface of Depository
- Functions like Securities Bank

- Account opening
- Facilitates dematerialisation/rematerialisation
- Instant transfer on pay-out
- Enables off market transfers
- Settles trades in electronic segment
- Pledge/enforcement of pledge etc.

A DP is one with whom an investor needs to open an account to deal in shares in electronic form. While the Depository can be compared to a Bank, DP is like a branch of that bank with which an account can be opened.

Both depository and custodian services are responsible for safe keeping of securities but they are different in the sense that the Depository can legally transfer beneficial ownership, while a custodian cannot. The main objective of a Depository is to minimize the paper work involved with the ownership, trading and transfer of securities.

### PART B

#### Question 3

(a) *XYZ Ltd. an unlisted company and now wishes to expand its business. For expansion, company decided to bring an initial public offer. Referring to provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulation, 2018, advise the company :*

- (i) *Eligibility requirements for an initial public offer.*
- (ii) *What company will do if eligibility conditions are not met ?*

(2+3=5 marks)

(b) *Consider a mutual fund that manages a portfolio of securities worth ₹240 million. Suppose the fund owes ₹8 million to its investment advisors and owes another ₹2 million for wages, rent and another expenses. The fund has 5 million shares outstanding.*

- (i) *What do you mean by NAV ?*
- (ii) *How NAV is calculated ?*
- (iii) *What was the net asset value of the fund ?*

(2+2+1=5 marks)

(c) *ABC Ltd. is a listed entity and having its board of directors. As the Company Secretary, suggest about the composition and role of audit committee.*

(5 marks)

#### Answer 3(a)

(i) **Eligibility requirements for an initial public offer [Regulation 6(1) & 6(2) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018]**

An issuer shall be eligible to make an IPO only if:

- a. The issuer has net tangible assets of atleast ₹3 crores, calculated on a restated

and consolidated basis, in each of the preceding three full years (of 12 months each), of which not more than 50% are held in monetary assets.

However, if more than 50% of the net tangible assets are held in monetary assets, the issuer has utilized or made firm commitments to utilize such excess monetary assets in its business or project. This limit of 50% on monetary assets shall not apply in case of IPO is made entirely through an offer for sale.

- b. The issuer has an average operating profit of at least ₹15 crores, calculated on a restated and consolidated basis, during the three preceding 3 years, with operating profit in each of the three preceding years.
- c. The issuer has a networth of atleast ₹ 1 crore in each of the preceding three full years, calculated on a restated and consolidated basis.
- d. In case the issuer has changed its name within the last one year, atleast 50% of the revenue calculated on a restated and consolidated basis, for the preceding one full year has been earned by it from the activity indicated by the new name.

**(ii) In case the Eligibility conditions are not met-**

An issuer not satisfying the above-mentioned conditions shall be eligible to make an initial public offer only if the issue is made through the book-building process and the issuer undertakes to allot at least 75% of the net offer to qualified institutional buyers (QIBs) and to refund the full subscription money if it fails to do so.

**Answer 3(b)**

- (i) The performance of a particular scheme of a mutual fund is denoted by Net Asset Value (NAV). In simple words, NAV is the market value of the securities held by the scheme.

Mutual funds invest the money collected from investors in securities markets. Since market value of securities changes every day, NAV of a scheme also varies on day-to-day basis.

- (ii) The NAV per unit is the market value of securities of a scheme divided by the total number of units of the scheme on any particular date.

Net Asset Value = Net Asset of the Scheme/ Number of units outstanding

Net Asset of the Scheme = Market value of investments + Receivables+ other accrued income+ other assets – Accrued Expenses- Other Payables- Other Liabilities

- (iii) Net Asset Value = ₹240 million - ₹8 million - ₹2 million / 5 million Shares

= ₹230 million / 5 million Shares

= ₹46

**Answer 3(c)**

**Composition of the Audit Committee**

Regulation 18 of the SEBI (Listing Obligations and Disclosure Requirements)

Regulations, 2015 stipulates the provisions pertaining to the composition and role of the Audit Committee which provides that:

- The audit committee shall have minimum three directors as members.
- At least two-thirds of the members of audit committee shall be independent directors.
- In case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors.
- The Chairperson of the audit committee shall be an independent director.
- The Company Secretary shall act as the secretary to the audit committee.
- The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee. However, occasionally the audit committee may meet without the presence of any executives of the listed entity.

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

#### **Role of Audit Committee**

The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II to the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015. The role of the audit committee includes the following:

- (1) oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
- (2) recommendation for appointment, remuneration and terms of appointment of auditors of the listed entity;
- (3) approval of payment to statutory auditors for any other services rendered by the statutory auditors;
- (4) reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:
  - (a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;
  - (b) changes, if any, in accounting policies and practices and reasons for the same;
  - (c) major accounting entries involving estimates based on the exercise of judgment by management;
  - (d) significant adjustments made in the financial statements arising out of audit findings;

- (e) compliance with listing and other legal requirements relating to financial statements;
  - (f) disclosure of any related party transactions;
  - (g) modified opinion(s) in the draft audit report;
- (5) reviewing, with the management, the quarterly financial statements before submission to the board for approval;
  - (6) reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public issue or rights issue or preferential issue or qualified institutions placement, and making appropriate recommendations to the board to take up steps in this matter;
  - (7) reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;
  - (8) approval or any subsequent modification of transactions of the listed entity with related parties;
  - (9) scrutiny of inter-corporate loans and investments;
  - (10) valuation of undertakings or assets of the listed entity, wherever it is necessary;
  - (11) evaluation of internal financial controls and risk management systems;
  - (12) reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;
  - (13) reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;
  - (14) discussion with internal auditors of any significant findings and follow up there on;
  - (15) reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;
  - (16) discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;
  - (17) to look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;
  - (18) to review the functioning of the whistle blower mechanism;
  - (19) approval of appointment of chief financial officer after assessing the qualifications, experience and background, etc. of the candidate;

- (20) Carrying out any other function as is mentioned in the terms of reference of the audit committee;
- (21) reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower including existing loans / advances / investments existing as on the date of coming into force of this provision;
- (22) consider and comment on rationale, cost-benefits and impact of schemes involving merger, demerger, amalgamation etc., on the listed entity and its shareholders.

#### Question 4

- (a) *RMM Ltd is a listed company engaged in automobile sector, manufacturing cars in India. Due to the growing demand of the cars in the market, the requirement of manufacturing more cars becomes essential. The competitors are also thinking in this line. The management of the company has the apprehension that the experienced employees may leave the company in order to get higher package. The CEO desires to issue Sweat Equity Shares to the employee to retain them. You being the company secretary advise the management about issue of sweat equity shares to employees, maximum quantum and pricing of equity shares under SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.*

(5 marks)

- (b) *Shibu Ltd. and its directors had mobilised funds from investors through different land and plot allotment schemes which satisfied four requirements of a collective investment scheme as defined in section 11AA. It was noticed that these schemes were being carried out without obtaining registration from SEBI under section 12(1B).*
- (i) *Explain the action to be initiated by SEBI on Shibu Ltd. and its directors.*
- (ii) *What are the requirements of section 11AA for CIS under SEBI Act, 1992 ?*
- (iii) *What are the provisions for registration and application for grant of certificate under SEBI Act, 1992.*

(5 marks)

- (c) *HM Ltd is a public company with a paid up capital of ₹30 crores as per the latest audited balance sheet. The net worth of the company for the year ending 31st March 2023 is 59 crores. The company is listed on Bombay Stock Exchange (BSE) and National Stock Exchange. The Board of Director plans for voluntary delisting from National Stock Exchange.*

*As a company secretary advise the Board regarding the conditions and procedures for delisting where exit opportunity is not required and conditions and procedures for delisting where exit opportunity is required.*

(5 marks)

#### Answer 4(a)

#### **Issue of sweat equity shares to employees under the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021**

A company whose equity shares are listed on a recognised stock exchange may

issue sweat equity shares in accordance with section 54 of the Companies Act, 2013 and SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 to its employees for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called. The term 'employee' means,

- (i) an employee of the company working in India or abroad; or
- (ii) a director of the company whether a whole time director or not.

**Maximum quantum of sweat equity shares under the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021**

A company shall not issue sweat equity shares for more than fifteen percent of the existing paid-up equity share capital in a year. However, the issuance of sweat equity shares in the company shall not exceed twenty five percent of the paid-up equity share capital of the company at any time.

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

**Pricing of sweat equity shares under the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021**

The price of sweat equity shares shall be determined in accordance with the pricing requirements stipulated for a preferential issue to a person other than a qualified institutional buyer under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

**Answer 4(b)**

As per Section 15D of the SEBI Act, 1992, if any person, who is required to obtain a certificate of registration from the SEBI for sponsoring or carrying on any collective investment scheme, sponsors or carries on any collective investment scheme, without obtaining such certificate of registration, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme subject to a maximum of one crore rupees.

Further, Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 states that the SEBI may, in the interests of the securities market and the investors give such directions as it deems fit in order to ensure effective observance of these regulations, including directions requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the collective investment scheme.

Therefore, in view of the above-mentioned provisions, Shibu Ltd. and its directors can be directed to refund illegally mobilised funds to investors and penalised with the amount as stated above.

**Requirements of section 11AA for Collective Investment Schemes (CIS) under the SEBI Act, 1992**

- (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) or sub-section (2A) of section 11AA of the SEBI Act, 1992 shall be a

collective investment scheme. However, any pooling of funds under any scheme or arrangement, which is not registered with the SEBI or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.

- (2) Any scheme or arrangement made or offered by any person under which,—
- (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;
  - (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;
  - (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
  - (iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.
- (2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under SEBI Act, 1992.
- (3) The following scheme or arrangements shall not be Collective Investment Scheme (CIS):
- (i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;
  - (ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;
  - (iii) being a contract of insurance to which the Insurance Act, 1938, applies;
  - (iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952;
  - (v) under which deposits are accepted under section 58A of the Companies Act, 1956 (now 74 of the Companies Act, 2013);
  - (vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under Section 620A of the Companies Act, 1956 (now section 406 of the Companies Act, 2013);
  - (vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982;
  - (viii) under which contributions made are in the nature of subscription to a mutual fund;
  - (ix) such other scheme or arrangement which the Central Government may, in consultation with SEBI, notify.

**Provisions for registration under the SEBI Act, 1992**

Section 12 (1B) of the SEBI Act, 1992 states that-

“No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the SEBI in accordance with the regulations.”

With this provision, a ban was imposed on a person carrying on any CIS, unless a certificate of registration is obtained in accordance with the regulations framed by SEBI.

**Provisions for Application for Grant of Certificate under the SEBI Act, 1992**

Regulation 4 of the SEBI (Collective Investment Schemes) Regulations, 1999 provides that any person proposing to carry any activity as a Collective Investment Management Company on or after the commencement of these regulations shall make an application to the SEBI for the grant of registration as specified under these regulations.

**Answer 4(c)****Conditions and procedure for delisting where exit opportunity is not required**

Regulation 5 of the SEBI (Delisting of Equity Shares) Regulations, 2021 provides that a company may delist its equity shares from one or more of the recognised stock exchanges on which it is listed without providing an exit opportunity to the public shareholders, if after the proposed delisting, the equity shares remain listed on any recognised stock exchange that has nationwide trading terminals. Any company desirous of delisting its equity shares where no exit opportunity is required shall-

- obtain prior approval of its Board of Directors;
- make an application to the relevant recognised stock exchange for delisting its equity shares;
- issue a public notice of the proposed delisting in at least one English national newspaper, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant stock exchange is located;
- disclose the fact of delisting in its first annual report post delisting

An application for delisting shall be disposed of by the recognised stock exchange within a period not exceeding thirty working days from the date of receipt of such application that is complete in all respects.

The following details shall be provided in the above-mentioned public notice:

- (a) The names of the recognized stock exchanges from where the equity shares of the company are intended to be delisted.
- (b) The reasons for such delisting.
- (c) The fact of continuation of listing of equity shares on recognized stock exchange having nationwide trading terminals.

### **Conditions and procedure for delisting where exit opportunity is required**

Regulation 7 the SEBI (Delisting of Equity Shares) Regulations, 2021 provides that the equity shares of a company may be delisted from all the recognised stock exchanges having nationwide trading terminals on which they are listed, after an exit opportunity has been provided by the acquirer to all the public shareholders holding the equity shares sought to be delisted, in accordance with Chapter IV of these regulations.

- *Initial public announcement* : On the date when the acquirer decides to voluntarily delist the equity shares of the company, it shall make an initial public announcement to all the stock exchanges on which the shares of the company are listed and the stock exchanges shall forthwith disseminate the same to the public. A copy of the initial public announcement shall also be sent to the company at its registered office not later than one working day from the date of the initial public announcement.
- *Appointment of the Manager to the offer* : Prior to making an initial public announcement, the acquirer shall appoint a merchant banker registered with SEBI as the Manager to the offer.
- *Approval by the Board of Directors* : The company shall obtain the approval of its Board of Directors in respect of the proposal of the acquirer to delist the equity shares of the company, not later than twenty-one days from the date of the initial public announcement. The Board of Directors of the company, before considering the proposal of delisting, shall appoint a Peer Review Company Secretary and provide the required information to such Company Secretary for carrying out due-diligence.
- *Approval by shareholders* : The company shall obtain the approval of the shareholders through a special resolution, not later than forty-five days from the date of obtaining the approval of Board of Directors. The special resolution shall be acted upon only if the votes cast by the public shareholders in favour of the proposal are at least two times the number of votes cast by the public shareholders against it.
- *In-principle approval of the stock exchange* : The company shall make an application to the relevant recognised stock exchange for in-principle approval of the proposed delisting of its equity shares in the Form specified by the recognised stock exchange from time to time, not later than fifteen working days from the date of passing of the special resolution or receipt of any other statutory or regulatory approval, whichever is later.
- *Escrow Account* : The acquirer shall open an interest bearing escrow account with a Scheduled Commercial Bank, not later than seven working days from the date of obtaining the shareholders' approval.
- *Detailed Public Announcement* : The acquirer shall, within one working day from the date of receipt of in-principle approval for delisting of equity shares from the recognised stock exchange, make a detailed public announcement.
- *Dispatch of Letter of Offer* : The acquirer shall dispatch the letter of offer to the public shareholders not later than two working days from the date of the detailed public announcement made.

- *Bidding Mechanism* : The bidding period shall start not later than seven working days from the date of the detailed public announcement and shall remain open for five working days.
- *Discovered price* : The discovered price shall be determined through the reverse book building process.
- *Counter Offer* : In case the discovered price is not acceptable to the acquirer, a counter offer may be made by the acquirer to the public shareholders within two working days of the closure of bidding period.
- *Release of shares in case failure of offer* : In case of failure of the delisting offer, the equity shares tendered / offered, shall be released.
- *Payment upon success of the offer* : All the public shareholders, whose bids are accepted, shall be paid the discovered price or a higher price, if any, offered by the acquirer.
- *Final application to the stock exchange after successful delisting* : The acquirer shall make the final application for delisting to the relevant recognised stock exchange within five working days from the date of making the payment to the public shareholders.

#### Question 5

- (a) An investor buy shares in a mutual fund for ₹400. At the end of the year, the fund distributes a dividend of ₹11.20 and after the distribution the net asset value of a share is ₹468.80. What would be the investor's return on the investment ?

(5 marks)

- (b) Satyawani Ltd. is a public limited company, listed in Bombay Stock Exchange. The Board of directors are planning to buy back of shares. You being the CFO, calculate the maximum number of shares that can be bought back along with offer price and advise the board of directors about buy back of maximum possible shares at the maximum possible offer price. Current assets includes bank balance of ₹15,00,000/-. The balance sheet as at 31st March 2023 is given below :

Liabilities	Amount (in ₹)	Assets	Amount (in ₹)
3,00,000 Equity shares of ₹10 each	30,00,000	Fixed Assets	75,00,000
25,000, 12% Preference Share Capital	25,00,000	Investment	30,00,000
General Reserve	10,00,000	Current Assets	30,00,000
Profit & Loss Account	25,00,000		
Security Premium	15,00,000		
12% Debentures	20,00,000		
Sundry Creditors	10,00,000		
	1,35,00,000		1,35,00,000

(5 marks)

- (c) *Sarala Ltd., public limited company is listed in Bombay Stock Exchange. Kamla is the Chief Financial Officer who works on the instruction of the Premlata. CEO of the Company. On the instruction of Premlata, Kamla has dealt in securities trading Kamla indulged in front running by using information received from Premlata for trading in some script and squared off trades along with trades of Premlata for making wrongful gain. Whether the action of Kamla is appropriate? You are also required to mention the prohibition of certain dealings in securities and manner of service of summons and notices issued by the SEBI under SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 2003.*

(5 marks)

**Answer 5(a)**

$$\begin{aligned} \text{Return on Investment (ROI)} &= \frac{\text{Net Return}}{\text{Cost of Investment}} \times 100 \\ &= \frac{(\text{₹}468.80 + \text{₹}11.20) - \text{₹}400}{\text{₹}400} \times 100 \\ &= \frac{\text{₹}80}{\text{₹}400} \times 100 \end{aligned}$$

Return on Investment = 20%

**Answer 5(b)**

- (i) According to regulation 4 of the SEBI (Buy-Back of Securities) Regulations, 2018, the maximum limit of any buy-back shall be 25% or less of the aggregate of paid-up capital and free reserves of the company, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount.

In the given situation, the maximum buy back limit will be:

Equity Share Capital = ₹30,00,000

12% Preference Share Capital = ₹25,00,000

General Reserve = ₹10,00,000

Profit & Loss Account = ₹25,00,000

Securities Premium = ₹15,00,000

Total = ₹105,00,000

Maximum amount of buy back by Satyawan Ltd. through special resolution:  
 $\text{₹}105,00,000 \times 25\% = \text{₹}26,25,000$

- (ii) Desired Debt Equity Ratio after Buyback shall be 2:1

Debt (given) (20,00,000) = ₹20,00,000

Equity to be maintained after Buyback =  $\text{₹}20,00,000 \div 2 = \text{₹}10,00,000$

Existing Equity (Share Capital + Free Reserves)

$(₹30,00,000 + ₹25,00,000 + ₹10,00,000 + ₹25,00,000 + ₹15,00,000) = ₹105,00,000$

Therefore, Permissible Dilution in Equity = ₹105,00,000 – ₹10,00,000 = ₹95,00,000

**Therefore, Maximum Permissible Buyback = Least of the above as calculated i.e. ₹26,25,000.**

Further, in respect of the number of equity shares bought back in any financial year, the maximum limit shall be 25% and be construed with respect to the total paid-up equity share capital of the company in that financial year.

Accordingly,

Maximum number of equity shares that can be bought back:

=  $(₹30,00,000 / ₹10 \text{ face value}) * 25\% = 75,000 \text{ shares}$

Maximum price that can be paid per equity share bought back:

=  $₹26,25,000 / 75,000 \text{ shares} = ₹35 \text{ per equity share.}$

### Answer 5(c)

On the instruction of Premlata, CEO of the Company, Kamla has dealt in securities trading and indulged in front running by using information received from Premlata for trading in some script and squared off trades along with trades of Premlata for making wrongful gain which is not an appropriate action of Kamla.

Regulation 3 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 lays down the provisions on prohibition of certain dealings in securities. It is provided that no person shall directly or indirectly –

- a) buy, sell or otherwise deal in securities in a fraudulent manner;
- b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the SEBI Act, 1992 or the rules or the regulations made there under;
- c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the SEBI Act, 1992 or the rules and the regulations made there under.

Further, Regulation 11A of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 provides the manner of service of summons and notices issued by the SEBI. It is provided that-

- (1) A summons or notice issued by the SEBI shall be served on the person through any of the following modes, namely—
  - (a) by delivering or tendering it to that person or his duly authorised agent; or

- (b) by sending it to the person by fax or electronic mail or electronic instant messaging services along with electronic mail or by courier or speed post or registered post.

However, the courier or speed post or registered post shall be sent to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain, with acknowledgment due.

Further, a summons or notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned.

Also, a summons or notice sent through electronic mail or electronic instant messaging services along with electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.

- (2) In case of failure to serve a summons or notice through any one of the modes as mentioned above, the summons or notice may be affixed on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided, or carried on business or personally works, or last worked, for gain and a written report thereof shall be prepared in the presence of two witnesses.
- (3) In case of failure to affix the summons or notice on the outer door, the summons or notice shall be published in at least two newspapers, one of which shall be in an English daily newspaper having nationwide circulation and another shall be in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.

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

**Question 6**

*Write short notes on the following :*

- (a) *Green debt security*
- (b) *Networth*
- (c) *Transfer Agent*
- (d) *Asset Management Company*
- (e) *Red-herring Prospectus.*

*(3 marks each)*

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

**Question 6A**

- (i) *Mr. P is working as Managing Director in ABC limited company. He holds following chairmanship directorship in the following :*
- (a) *Whole time director in XYZ limited company.*

(b) *Managing director in KLM limited company.*

(c) *Member of Nomination and Remuneration committee of ABC Ltd.*

*You are required to advise him the limit of directorship.*

*(5 marks)*

(ii) *XYZ Limited is a listed company. It has constituted all committees in compliance with listing regulations. Its audit committee having 6 directors, out of which 5 directors are independent. In the meeting of audit committee 2 directors were present (1 nonexecutive and one independent). Is this audit committee meeting valid ?*

*(5 marks)*

(iii) *ABC Limited is a listed company. Its financial data as on 31st March, 2022 are as follows :*

<i>Authorised equity share capital</i>	<i>₹20 Crore</i>
<i>(2 Crore shares of ₹10 each)</i>	
<i>Paid up equity share capital</i>	<i>₹10 Crore</i>
<i>General reserve</i>	<i>₹6 Crore</i>
<i>Debenture redemption reserve</i>	<i>₹4 Crore</i>

*The board of directors of your company passed resolution by circulation for buyback of shares to the extent of 8% of the company's paid-up share capital and free reserves.*

(a) *You are required to examine the validity of the proposal with reference to the provisions of the SEBI regulation.*

(b) *What will be your suggestion if buy back will be of 12% of the company's paid up share capital and free reserves ?*

*(5 marks)*

### **Answer 6(a)**

#### **Green Debt Security**

“Green debt security” means a debt security issued for raising funds subject to the conditions as may be specified by the SEBI from time to time, to be utilised for project(s) and/ or asset(s) falling under any of the following categories:

- (i) renewable and sustainable energy including wind, bioenergy, other sources of energy which use clean technology,
- (ii) clean transportation including mass/public transportation,
- (iii) climate change adaptation including efforts to make infrastructure more resilient to impacts of climate change and information support systems such as climate observation and early warning systems,
- (iv) energy efficiency including efficient and green buildings,

- (v) sustainable waste management including recycling, waste to energy, efficient disposal of wastage,
- (vi) sustainable land use including sustainable forestry and agriculture, afforestation,
- (vii) biodiversity conservation,
- (viii) pollution prevention and control (including reduction of air emissions, greenhouse gas control, soil remediation, waste prevention, waste reduction, waste recycling and energy efficient or emission efficient waste to energy) and sectors mentioned under the India Cooling Action Plan launched by the Ministry of Environment, Forest and Climate Change,
- (ix) circular economy adapted products, production technologies and processes (such as the design and introduction of reusable, recyclable and refurbished materials, components and products, circular tools and services) and/or eco efficient products,
- (x) blue bonds which comprise of funds raised for sustainable water management including clean water and water recycling, and sustainable maritime sector including sustainable shipping, sustainable fishing, fully traceable sustainable seafood, ocean energy and ocean mapping,
- (xi) yellow bonds which comprise of funds raised for solar energy generation and the upstream industries and downstream industries associated with it,
- (xii) transition bonds which comprise of funds raised for transitioning to a more sustainable form of operations, in line with India's Intended Nationally Determined Contributions, and

*Explanation* : Intended Nationally Determined Contributions (INDCs) refer to the climate targets determined by India under the Paris Agreement at the Conference of Parties 21 in 2015, and at the Conference of Parties 26 in 2021, as revised from time to time.

- (xiii) any other category, as may be specified by the SEBI from time to time.

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

#### **Net Worth**

The term Net worth is defined in sub-section (57) of section 2 of the Companies Act, 2013 which means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

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

#### **Transfer Agent**

A transfer agent is a person who has been granted a Certificate of Registration to

conduct the business of transfer agent under the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993. Share transfer agent means

- (i) any person, who on behalf of any body corporate, maintains the records of holders of securities issued by such body corporate and deals with all matters connected with the transfer and redemption of its securities;
- (ii) a department or division, by whatever name called, of a body corporate performing the activities referred in sub-clause (i) if at any time the total number of the holders of its securities issued exceed one lakh.

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

##### **Asset Management Company**

Asset management company means a company formed and registered under the Companies Act, 2013 and approved by the SEBI after fulfilling the eligibility criteria for appointment of asset management company.

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

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

#### **Answer 6(e)**

##### **Red-herring Prospectus**

"Red Herring Prospectus" (RHP) is a prospectus, which does not have details of either price or number of shares being offered, or the amount of issue. This means that in case price is not disclosed, the number of shares and the upper and lower price bands are disclosed. On the other hand, an issuer can state the issue size and the number of shares are determined later. An RHP for an FPO can be filed with the ROC without the price band and the issuer, in such a case will notify the floor price or a price band by way of an advertisement one day prior to the opening of the issue. In the case of book-built issues, it is a process of price discovery and the price cannot be determined until the bidding process is completed. Hence, such details are not shown in the RHP filed with ROC as per the Companies Act, 2013. Only on completion of the bidding process, the details of the final price are included in the offer document. The offer document filed thereafter with ROC is called a prospectus.

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

Section 203(3) of the Companies Act, provides that a whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company

at the same time. However, third proviso to Section 203(3) of the Companies Act, 2013 provides that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

**In the given case, Mr. P is managing director/whole time director in total 3 companies i.e. ABC Ltd., XYZ Ltd. and KLM Ltd., which is in contravention to the provisions of the Companies Act, 2013.**

However, in terms of count of directorship,

- i. Section 165 of the Companies Act, 2013, states that a person shall not hold office as a director, including any alternate directorship, in more than 20 companies at the same time. However, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.
- ii. Further, in the case of listed company, the maximum number of directorships is provided in Regulation 17A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which states that a person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020.

Therefore, in terms of count of directorship, Mr. P being managing director/whole time director in total 3 companies i.e. ABC Ltd., XYZ Ltd. and KLM Ltd, is within the limit of Section 165 of the Companies Act, 2013 and Regulation 17A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 as stated above.

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

As per regulation 18(2)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least two independent directors.

In the given case, in terms of the aforesaid listing regulation, quorum requirement will be either two members or one third of the six members, whichever is greater. Therefore, it shall be two members who shall be independent directors only to fulfil the requirement of Quorum.

In the given case, though two directors were present but one non-executive director and one independent director. Therefore, the aforesaid meeting is not invalid as only one independent director was present.

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

According to regulation 5 of the SEBI (Buy-back of Securities) Regulations, 2018, the company shall not authorize any buy back (whether by way of tender offer or from open market) unless a special resolution has been passed at a general meeting of the company authorizing the buy back. However, special resolution is not required, where the buy back is ten percent or less of the total paid up equity capital and free reserves of

the company; and such buy back has been authorized by the board of directors by means of a resolution passed at its meeting.

- (a) In the given situation, the company desired to buy back of shares to the extent of 8% of paid up capital and free reserves by way of passing of board resolution through circulation. However, as per above regulations and Section 179 of the Companies Act, 2013, the board resolution pertaining to buy-back should be passed at its meeting and not through circulation. Therefore, with reference to above stated provisions, the proposal of buy back is not valid.
- (b) In second given case, the buy back is 12% which is more than 10% limit of company's paid- up share capital and free reserves. In this case, buy back must be authorized by special resolution.

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## ECONOMIC, COMMERCIAL AND INTELLECTUAL PROPERTY LAWS

*Time allowed : 3 hours*

*Maximum marks : 100*

*Total number of questions : 6*

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

### PART I

#### Question 1

*Tiya purchases a laptop for her sister Siya from HP. The laptop had initial installation issues, when taken to the manufacturer's service centre defect in the laptop was detected. The company refuses to redress the issues faced by Siya on the pretext that she was not the consumer. On the basis of the above case, answer the following questions :*

- (i) Can Siya be treated as a consumer as she is not the person who purchased the laptop ?*
- (ii) If this laptop was purchased through amazon, explain the duty of the e-commerce giant in case of grievance.*
- (iii) Had a mediator been appointed to settle the issue, what is the procedure of mediation as given in provision.*

*(5 marks each)*

#### Answer 1(i)

As per Section 2(7) of the Consumer Protection Act, 2019, Consumer means any person who—

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Thus, even if Siya has not purchased the laptop but she uses it with the approval of Tiya, her sister, so according to the definition Siya can be treated as a Consumer.

#### Answer 1(ii)

According to the Consumer Protection (E-commerce) Rules 2020, every ecommerce entity shall establish an adequate grievance redressal mechanism having regard to the number of grievances ordinarily received by such entity from India, and shall appoint a

grievance officer for consumer grievance redressal and shall display the name, contact details, designation of such officer.

Further, every e-commerce entity shall ensure that the grievance officer acknowledge the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of the complaint.

**Answer 1(iii)**

Section 79 of Consumer Protection Act, 2019 states that the mediation shall be held in the consumer mediation cell attached to the District Commission, the State Commission or the National Commission as the case may be.

Where a consumer dispute is referred for mediation by the district commission or the State commission or the National commission, as the case may be, the mediator nominated by such commission shall have regard to the rights and obligations of the parties, the usage of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall be guided by the principle of natural justice while carrying out mediation.

The mediator so nominated shall conduct mediation within such time and in such manner as may be specified by regulations.

**Question 2**

- (a) *Titto is seller of dental floss in the market where he holds monopoly as there are only handful sellers in this product line of dental care. The competitor accuses him of possessing dominant position and abusing the same. Explain the understanding of dominant position and abuse of the same.*
- (b) *Faizal is a fugitive economic offender and has left India to avoid legal proceedings against him. Discuss the provisions relating to power of civil/tribunal to disallow civil claims and attach his property.*
- (c) *Chandu intends to make overseas direct investment with a view to earning a return. Since Chandu is looking at either real estate or lottery, you are required to state the restriction or prohibitions in context of ODI.*

(5 marks each)

**Answer 2(a)**

Section 4 strictly prohibits abuse of dominant position by any enterprise or group. Section 4 (2)(a) of Competition Act, 2002 states that there is abuse of dominant position if an enterprise or group – directly or indirectly imposes unfair or discriminatory (i) condition in purchase or sale of goods or services or (ii) price in purchase or sale (including predatory price) of goods or service.

Section 4 (2)(b) includes in abuse of dominant position an enterprise or group limiting or restricting (i) production of goods or provision of services or market therefore or (ii) technical or scientific development relating to goods or services to the prejudice of consumers.

Similarly Section 4 (2)(c), (d) (e) specify three other forms of abuses namely, if any person indulges in practice or practices resulting in denial of market access in any manner, or makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by nature or according to commercial usage, have no connection with the subject of such contracts and also, if any person uses dominant position in one relevant market to enter into, or protect, other relevant market.

Dominance refers to a position of strength which enables an enterprise to operate independently of competitive forces or to affect its competitors or consumers or the market in its favour. Abuse of dominant position impedes fair competition between firms, exploits consumers and makes it difficult for the other players to compete with the dominant undertaking on merit. Abuse of dominant position includes

1. Imposing unfair conditions or price
2. Predatory pricing
3. Limiting production/ market or technical development
4. Creating barriers to entry
5. Applying dissimilar conditions on similar transactions
6. Denying market access
7. Using dominant position in one market to gain advantage in another market.

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

#### **Power to Disallow Civil Claims**

Section 14 of the Fugitive Economic Offenders Act, 2018 deals with power to disallow civil claims. It provides that notwithstanding anything contained in any other law for the time being in force

- a. On a declaration of an individual as a fugitive economic offender any court or tribunal in India in any civil proceeding before it, may, disallow such individual from putting forward or defending any civil claims and
- b. Any Court or Tribunal in India in any civil proceeding before it, may disallow any company or limited liability partnership from putting forward or defending any civil claim, if an individual filing the claim on behalf of the company or the limited liability partnership or any promoter or key managerial personnel or majority shareholder of the company or an individual having a controlling interest in the limited liability partnership has been declared as a fugitive economic offender.

#### **Attachment of Property**

Section 5 of the Fugitive Economic Offenders Act, 2018 empower the Director or any other officer authorised by the Director, not below the rank of Deputy Director, may with the permission of the Special Court, attach any by an order in writing in prescribed manner.

The Director or any other officer authorised by the Director, not below the rank of Deputy Director, authorised by the Director may by an order in writing, at any time prior to the filing of the application to the Special Court attach any property

1. For which there is a reason to believe that the property is proceeds of crime, or is a property or benami property owned by an individual who is a fugitive economic offender and
2. Which is being or is likely to be dealt with in a manner which may result in the property being unavailable for confiscation.

Director or any other officer who provisionally attaches any property shall within a period of thirty days from the date of such attachment file an application before the Special Court.

The attachment of any property shall continue for a period of one hundred and eighty days from the date of order of such attachment or such other period as may be extended by the special court before the expiry of such period.

**Answer 2(c)**

Rule 19 of the Foreign Exchange Management (Overseas Investment) Rules, 2022 provides that unless otherwise provided in FEMA or these Rules, no person resident in India will make Overseas Direct Investment (ODI) in a foreign entity engaged in

- a. real estate activity
- b. gambling in any form and
- c. Dealing with financial products linked to the Indian rupees without specific approval of Reserve Bank.

Any ODI in start-up recognised under the laws of the host country or host jurisdiction as the case maybe, shall be made by an Indian entity only from internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals from own funds of such an individual.

No person resident in India shall make financial commitment in a foreign entity that has invested or invest into India, at the time of making such financial commitment or at any time thereafter either directly or indirectly, resulting in a structure with more than two layers of subsidiaries.

**Question 3**

- (a) *Trilok purchased a tractor from Jahanvi Limited for tilling the land but he used it during idle time for transportation of agricultural produce on hire. Some defects were developed in the engine of the tractor. He complained to Jahanvi Limited, but all in vain. Then he filed a suit in Consumer Dispute Redressal Forum for damages caused by the defects. Jahanvi Limited pleaded that Trilok is not a 'consumer' within the definition of section 2(i) (d) of the Consumer Protection Act, 1986, as he is using the tractor for commercial purposes. Whether Trilok will succeed in his case ? Refer to relevant provision of Law in support of your answer with reference to case laws, if any ?*

(5 marks)

- (b) *Amit, a director of a Public Limited Company was on a business trip to USA. Suddenly, he developed chest pain there and was provided medical treatment in a hospital, the funds for which were provided by one John, a US national who happened to be his friend. Did Amit violate the provisions of the Foreign Contribution Regulation Act, 2010 ? Give reason.*

(5 marks)

- (c) *'A', an individual by a transaction, purchased a house in the name of his wife. Consideration of transaction was paid by 'A' out of his known sources. Government seized the house claiming it to be a benami property. Decide. Whether the action of the Government is justified under the Prohibition of the Benami Transaction Act, 1988 ?*

(5 marks)

**Answer 3(a)**

According to Section 2(7) of the Consumer Protection Act, 2019, consumer means any person who—

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

It may be noted that “commercial purpose” does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

Further, in the case of *Bhupendra Jang Bahadur Gurna Vs. the Regional Manager & Others (II 1995 CPJ 139)*, the National Commission held that a tractor purchase primarily to fill the land of the purchaser and let out on hire during the idle time to fill the lands of others would not amount to Commercial use.

In the light of the above provisions of the Consumer Protection Act, 2019 and decided case law, Trilok, will succeed in his own case. He is still a consumer within the definition of the Consumer Protection Act, 2019.

**Answer 3(b)**

As per Section 6 of the Foreign Contribution Regulation Act, 2010 following person cannot receive foreign hospitality visiting any country without prior permission of the Central Government:

- i. Members of a legislature
- ii. Office bearers of political parties.
- iii. Judges
- iv. Government Servants, Public Servants
- v. Employees of any Corporation or any other body owned or controlled by the Government

Since Directors of Public Company are not covered under Section 6 of the Foreign Contribution Regulation Act, 2010. Therefore, Amit can accept foreign hospitality and as such he or the company has not contravened the provisions of the Foreign Contribution Regulation Act, 2010.

**Answer 3(c)**

According to Section 2(9) of the Prohibition of Benami Transactions Act, 1988, an individual purchasing a property in the name of his spouse or any child and the consideration for such property has been provided out of the known sources shall not amount to Benami Transaction.

'A' has purchased a house in the name of his wife and consideration of transaction was paid by 'A' out of his known sources and thus it is not a benami transaction.

Therefore, the action of the Government is not justified under Prohibition of Benami Property Transactions Act, 1988.

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

**Question 4**

- (a) Explain the provisions of section 5 of the Foreign Contribution (Regulation) Act, 2010 relating to procedure to notify on Organization of a political nature.
- (b) Analyse the powers of the Central Government to supersede the Special Economic Zone Authority under the Special Economic Zones Act, 2005. What will be the consequences of its implementation ?
- (c) Which orders may be issued by Competition Commission of India after inquiry into agreements or abuse of dominant position under Section 27 of the Competition Act, 2002 ?

(5 marks each)

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

**Question 4A**

- (i) Who is status holder under the Foreign Trade Policy and Procedure of India enumerated as per Foreign Trade Policy.
- (ii) What facilities are available in case of private visits and for emigration under the Liberalized Remittance Scheme (LRS) ?
- (iii) Describe the adopted ways in which collusive bidding or bid rigging may occur.
- (iv) Elaborate the law and procedure in respect of confiscation and vesting of benami property under the Benami Transactions (Prohibition) Act, 1988.

(4 marks)

(4 marks)

(3 marks)

(4 marks)

**Answer 4(a)**

According to section 5(1) of the Foreign Contribution (Regulation) Act, 2010, the Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organizations with the activities of any political party, by an order published in the Official Gazette, specify such organisation as an organisation of a political nature not being a political party, referred to in clause (f) of sub section (1) of section 3. The Central Government may, by rules made by it, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of a political nature.

As per Section 5(2) of the Act, before making an order under sub- section (1), the Central Government shall give the organisation in respect of whom the order is proposed to be made, a notice in writing informing it of the ground or grounds, on which it is proposed to be specified as an organisation of political nature under that sub-section.

Section 5(3) states that the organisation to whom a notice has been served under sub-section (2), may, within a period of thirty days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organisation as an organisation under sub-section (1). The Central Government may entertain the representation after the expiry of the said period of thirty days, if it is satisfied that the organisation was prevented by sufficient cause from making the representation within thirty days.

Section 5(4) provides that the Central Government may, if it considers it appropriate, forward the representation referred to the sub-section (3) to any authority to report on such representation.

The Central Government may, after considering the representation and the report of the authority referred to in sub-section (4), specify such organisation as an organisation of a political nature not being a political party and make an order under sub-section (1) accordingly.

Every order under sub-section (1) shall be made within a period of one hundred and twenty days from the date of issue of Notice under sub-section (2). In case no order is made within the said period of one hundred and twenty days, the Central Government shall, after recording the reasons therefore make an order under sub-section (1) within the period of sixty days from expiry of the said period of one hundred and twenty days.

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

Section 40 of the Special Economic Zones Act, 2005 empowers the Central Government to supersede an Authority for a maximum period of six months if at any time, it is of the opinion that an Authority is unable to perform, or has persistently made default in the performance of the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully or without sufficient cause, failed to comply with any direction issued by it under section 38. However, before issuing a notification superseding an authority, the Central Government is required to give reasonable time to that Authority to make representation against the proposed suppression and consider the representations, if any, of the Authority.

Section 40(2) dealing with the consequences of publication of the notification superseding the Authority, provides that-

- a. the Chairperson and other Member of the Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such;
- b. all the powers, functions and duties which may, by or under the provisions of the Act, be exercised or discharged by or on behalf of the Authority shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct;
- c. all property vested in the Authority shall, during the period of supersession, vest in the Central Government.

Section 40(3) also provides that on the expiration of the period of supersession specified in the notification, the Central Government may extend the period of supersession for such further period not exceeding six months or reconstitute the Authority in the prescribed manner.

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

Section 27 of the Competition Act, 2002 envisages that the Competition Commission of India after any inquiry into agreement entered into by any enterprise or association

of enterprises or person or association of persons, or an inquiry into abuse of dominant position may pass all or any of the following orders, namely, -

- i. Direct that such agreement or abuse of dominant position shall be discontinued and such agreement, which is in contravention of section 3 shall not be re-entered or the abuse of dominant position in contravention or Section 4 shall be discounted as the case may be. The direction to discontinue and not to recur is commonly known as "Cease & desist" order.
- ii. The Commission may impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover or income, as the case may be, for the last three preceding financial years, upon each of such person or enterprise which is a party to such agreement or has abused its dominant position. Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover or income, as the case may be, for each year of the continuance of such agreement, whichever is higher.
- iii. The Commission may direct that the agreement shall stand modified to the extent and in the manner as specified in the order.
- iv. The Commission may direct the enterprises concerned to comply with, such other orders and directions, including payment of cost, if any, as it deems fit.
- v. To pass such order or issue such directions as it may deem fit.

**Answer 4A(i)**

- a. Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade, Status Holder are expected to not only contribute towards India's exports but also provide guidance and handholding to new entrepreneurs.
- b. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance. An applicant shall be categorized as status holder upon achieving export performance during current and previous two financial years, as indicated in Foreign Trade Policy. The export performance will be counted on the basis of FOB value of export earnings in free foreign exchange.
- c. For deemed export, for value of exports in Indian Rupees shall be converted in US\$ at the exchange rate notified by CBEC, as applicable on 1<sup>st</sup> April of each Financial Year.
- d. For granting status, export performance is necessary in at least two out of three years.

<b>Status Category</b>	<b>Export Performance (in US \$ million)</b>
One Star Export House	<b>(3)</b>
Two Star Export House	<b>(15)</b>
Three Star Export House	<b>(50)</b>
Four Star Export House	<b>(200)</b>
Five Star Export House	<b>(800)</b>

**Answer 4A(ii)**

Private visits : For private visits abroad, other than visit to Nepal and Bhutan, resident individual can obtain foreign exchange up to an aggregate amount of USD 2,50,000, from an Authorised Dealer, in any one financial year, irrespective of the number of visits undertaken during the year.

Further, all tour related expenses including cost of rail/road/water transportation; cost of Euro Rail; passes/tickets, etc. outside India; and overseas hotel/lodging expenses are to be subsumed under the Liberalised Remittance Scheme (USD 2,50,000 per Financial Year). The tour operator can collect this amount either in Indian rupees or in foreign currency from the resident traveller.

Emigration : A person wanting to emigrate can draw foreign exchange from AD Category I bank and AD Category II up to the amount prescribed by the country of emigration or USD 250,000. Remittance of any amount of foreign exchange outside India in excess of this limit may be allowed only towards meeting incidental expenses in the country of immigration and not for earning points or credits to become eligible for immigration by way of overseas investments in government bonds; land; commercial enterprise; etc.

**Answer 4A(iii)**

Some of the most commonly ways in which collusive bidding or bid rigging may occur are:

- Agreements to submit identical bids
- Agreements as to who shall submit the lowest bid
- Agreements for the submission of cover bids (voluntarily inflated bids)
- Agreement not to bid against each other
- Agreement on common norms to calculate prices or terms of bids
- Agreement to squeeze out outside bidders
- Agreement designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis.

**Answer 4A(iv)**

Section 27 of Benami Transaction (Prohibition) Act, 1988 deals with confiscation and vesting of benami property. According to Section 27(1) of the Act where an order is passed in respect of any property under section 26(3) holding such property to be a benami property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a benami property. However, where an appeal has been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal under section 46. Further, confiscation of the property shall be made in accordance with such procedure as may be prescribed.

Section 27(2) provides that the above shall not apply to a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice under sub-section (1) of section 24 without his having knowledge of the benami transaction.

Section 27(3) states that where an order of confiscation has been made, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.

As per Section 27 (4) any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void.

Section 27 (5) provides that where no order of confiscation is made upon the proceeding under this Act attaining finality, no claim shall lie against the Government.

## PART II

### Question 5

*X Pharmaceuticals Ltd., a renowned pharmaceutical company engaged in producing new pharmaceutical drugs have developed a new drug applying the process of making, combining drugs of a chemical materials and a micro-organism. X Pharmaceuticals Ltd. had patented this new innovative process to the Appropriate authority and got its patent registered. Whereas Y Instra Lab Pvt. Ltd. engaged in producing pharma drugs developed a drug of a combination of drug of penicillin and lactobacilli following the same process as X Pharmaceuticals Ltd. used in producing its drugs and already entered the market with their combination of drug product for quite a few months.*

*X Pharmaceuticals Ltd., claimed that they have developed the process of manufacturing their drugs after years of research and development as also claimed that they have evolved a new process in producing the same drug with a new process hitherto unknown to the Pharmaceutical word. X Pharmaceuticals Ltd. filed a suit against Y Instra Lab Pvt. Ltd for seeking expert ad interim injunction restraining Y Instra Lab Pvt. Ltd. from using the said process for its products and marketing them. In light of the above, answer the following questions :*

- (i) *Is the process developed by X Pharmaceuticals Ltd., is new and innovative ?*  
(5 marks)
- (ii) *Identify from the above case study as to whether the process adopted by X Pharmaceuticals Ltd., have been patented or 'combination of drug' have been patented ?*  
(3 marks)
- (iii) *Can the process developed by X Pharmaceuticals Ltd., be used by Y Instra Lab Pvt. Ltd. in producing its combination of drug ?*  
(4 marks)
- (iv) *Can X Pharmaceuticals Ltd., restrain Y Instra Lab. Pvt. Ltd. from using the process of combination of drug ?*  
(5 marks)
- (v) *What relief/award/order can be provided for X Pharmaceuticals Ltd. in this instant case.*  
(3 marks)

### Answer 5 (i)

An invention is patentable subject matter if it meets the following criteria –

- It should be novel.
- It should have inventive step or it must be non-obvious.
- It should be capable of Industrial application.
- It should not attract the provisions of section 3 and 4 of the Patents Act, 1970.

According to Section 2(1) (j) of Patent Act, 1970, invention as to mean a new product or process involving an inventive step and capable of Industrial application.

According to Section 2(1) (ja), of Patent Act, 1970 inventive step as to mean a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art.

An invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented. Pursuant to section 3(d) of the Act, the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant cannot be patented.

In the present case the process of making combination drugs of a chemical material and a micro-organism is a well-accepted process. Hence, the same process which X Pharmaceuticals Ltd., claim to have developed after years of research and development is really in use since long and cannot be said to have evolved a new process hitherto unknown to the pharmaceutical world since Y Instra Lab Pvt Ltd has developed the drug by following same process and had already entered the market for quite a few months.

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

From the given case study, it is clear that whilst X Pharmaceuticals Ltd. are engaged in production of new pharmaceutical drugs by applying the process of making, combining drugs of a chemical materials and a micro-organism, they have only obtained the patent registration for the process and not for the product of such process.

Therefore, in the instant case it is found that X Pharmaceutical Ltd. has patented the process only not the combination-drug itself.

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

It is evident from the given case study that although X Pharmaceuticals Ltd. is producing pharmaceutical drugs through the application of a process that combines drugs made of chemical materials and microorganisms, they have only been granted patent registration for the process and not for the end product.

This clearly states that process patented by X-Pharmaceutical Ltd, was not unknown to the pharmaceutical world and was in use prior to their patent registration, since Y Instra Lab Pvt Ltd has developed drug of a combination of penicillin and lactobacilli by following the same process as X Pharmaceuticals Ltd and had already entered the market for quite a few months.

Besides this, the process that followed by X-Pharmaceutical Ltd, was patented not the combination of drug itself. So, in the instant case the Y Instra Lab. Pvt. Ltd can use the process as claimed by X Pharmaceutical Ltd.

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

After going through the entire material facts of the case, it is apparent that the process of making combination drugs of a chemical material and a micro-organism is a well-accepted process. Hence the process which X-Pharmaceutical Ltd. claim to have developed is really in use for a long time. So, the Company i.e., X-Pharmaceutical Ltd, cannot be said to have evolved a new process unknown to the pharmaceutical world. The significant point is that what is patented by X-Pharmaceutical Ltd. is the "process" and not the combination of drug itself.

If, prima facie, the process evolved by the X-Pharmaceutical Ltd., is not found to be patentable, the Y Instra Lab. Pvt. Ltd. cannot be restrained from using the said process for its products and for marketing them.

In the instant case, the Y Instra Lab, Pvt. Ltd. had already entered the market few months back. Therefore, it is not proper to restrain them from continuing to market its products.

**Answer 5(v)**

If this instant case is referred to Court for Judgment /order/relief, the Hon'ble Court will vacate ex-parte ad interim injunction and will reject the application for interim injunction due to patented process lacking and not meeting the criteria of novelty and inventive step for its patentability.

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

**Question 6**

- (a) *Do the following acts constitute infringement of copyright under the Copyright Act, 1957 :*
- (i) *Prof. Ajay recited in public an extract from a poem by Rabindranath Tagore.*
  - (ii) *ABC Publisher published a compilation of speeches of Atal Bihari Vajpayee, former Prime Minister, delivered in public without permission.*
  - (iii) *A newspaper publishes a copy of masterpiece painting of Ganesh while carrying a story on his death.*
  - (iv) *A book is not available in India. A librarian makes 10 copies of the book for the use of the Public library.*
  - (v) *A magazine reproduces an article on a political topic by Kuldeep Nayar.*
- (b) *Manish assigned the copyright of his book to his niece Sujata in 2020. In 2022, due to some misunderstanding between them, Manish wants to revoke the assignment. Sujata contents that she has not made any fault and that she had helped a lot and there is no ground for revocation of assignment. Discuss.*
- (c) *You have recently been appointed as Company Secretary of the Ever Innovative Limited. Your Company receives a notice from the controller of patent that the application filled by your company for the grant of a patent of a new machine was deemed to have been abandoned. How you propose to deal with the matter ?*
- (d) *What is meant by an Industrial property under the Intellectual Property Rights?*

(5 marks each)

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

**Question 6A**

- (i) *An application for registration of patents is filled with provisional specification indicating the subject matter to which the invention relates. State the contents of specification.*
- (ii) *Who is the proprietor of a design and state the prohibition in registration of certain design ?*

- (iii) *Explain the Provision 39 of Geographic indications relating to penalty for false geographical indications.*
- (iv) *Explain the broadcast reproduction rights under the provisions of the Copyright Act, 1957.*

*(5 marks each)*

**Answer 6 (a)**

Keeping in view provisions of Section 52 and other provisions of the Copyright Act, 1957 answer to given as follows: -

- (i) The reading or recitation in public of reasonable extracts from a published literary or dramatic work do not amounts to infringement of Copyright. Thus, Prof. Ajay can recite in public an extract from a poem by Rabindranath Tagore.
- (ii) Using the speech of former Prime Minister privately or reporting in newspaper or Magazine or television as news will not amount to infringement of copyright. But publishing a compilation of speeches of former Prime Minister to mass public without permission will amount to infringement of copyright.
- (iii) A fair dealing with any work for the purposes of reporting of current events and current affairs will not amount to infringement of copyright. Thus, a newspaper can publish a copy of masterpiece painting of Ganesh with a story on his death.
- (iv) Making of not more than 3 copies of a book by or under the direction of the person in charge of a non -commercial public library for the use of the library if such book in not available for sale in India will not amount to infringement of copyright. In given case librarian has made 10 copies; hence it amounts to infringement of Copyright.
- (v) The reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics will not amount to infringement of copyright. However, if the author of such article has expressly reserved to himself the right of reproduction, then reproduction without his permission will amount to infringement of copyright. Thus, if magazine reproduces the article of Kuldeep Nayar on political topic without his permission who has reserved the right of reproduction to himself expressly, it amounts to infringement of copyright. However, if Kuldeep Nayar has not reserved such right expressly then it will not amount to infringement.

**Answer 6(b)**

Section 19A of the Copyright Act, 1957 deals with disputes with respect to assignment of Copyright. It provides that:

If an assignee fails to exercise the right assigned in him them Appellate Board may on receipt of complaint from assignor and after holding inquiry can revoke such the assignment.

However, the Appellate Board will not pass order to revoke the assignment unless the terms of the assignment are harsh to the assigner.

It is also provided that no order to revoke the assignment can be passed within a period of 5 year from the date of assignment.

Thus, Manish can successfully revoke the licence only after 5 years of the assignment if he shows to the Appellate Board that the terms of the assignment are harsh to him.

Hence, Manish cannot revoke the assignment in 2022 if he has made assignment in 2020.

**Answer 6(c)**

Time for putting application in order for grant patent (Section 21 of Patents Act, 1970):

Application for grant of patent shall be deemed to have been abandoned if applicant fails to comply with the requirements within twelve months. Failure to comply requirement may be related to complete specification or application to grant patent. The period of twelve months starts from: -

- filling complete specification /other document or
- filling of first statement of objection

If any document filed with the controller is returned by him, it will be treated as applicant deemed to have not complied with requirement unless he refiles the document. If at the expiry of above twelve months period the appeal is pending with High Court, then High Court may extend the period of twelve months by such period as it thinks fit.

If appeal is not pending before High Court time can be extended by Controller up to twelve months only.

Thus, as a Company Secretary of Ever Innovative Limited I will see that strong reasons are built up to prove to the satisfaction of the Controller to justify non-compliance attributable to the reasons beyond control and if appeal is pending before High Court advantage of that can be taken.

**Answer 6(d)**

The expression "Industrial Property" is sometimes misunderstood as relating to movable or immovable property used for industrial production. However, industrial property is a kind of intellectual property and relates to creation of human mind, e.g., inventions and industrial designs. Simply stated, inventions are new solutions to technological problems, and industrial designs are aesthetic creations determining the appearance of industrial products. In addition, Industrial property includes trademarks, service marks, commercial names and designs, including indications of source and appellations of origin, and the protection against unfair competition.

The term 'Industrial Property' may not appear entirely logical in the sense that the inventions are only concerned with the industry. In other words, the inventions are exploited in industrial plants while the trademarks, service marks, trade names and service names are concerned with both the commerce as well as industry. Notwithstanding the lack of logic, this term has acquired a meaning which clearly covers inventions as well as other marks. The Paris Convention also recognised industrial property to cover patent, trademark, service mark, trade names, utility models, industrial designs, indication of source and appellations of origin and the repression of unfair competition. Hence, intellectual property right is a collective name for rights referring to the commercial or industrial activities of a person. These activities may include the activities of industrial or commercial interests. They may be called inventions, creations, new products, processes of manufacture, new designs or model and a distinctive mark for goods etc.

**Answer 6A(i)**

A provisional specification is usually filed to establish priority of the invention in case the disclosed invention is only at a conceptual stage and a delay is expected in submitting full and specific description of the invention. The provisional specification is a permanent and independent scientific cum legal document and no amendment is allowed in this. No patent is granted on the basis of a provisional specification. It has to be followed by a complete specification for obtaining a patent for the said invention.

Complete specification must be submitted within 12 months of filing the provisional specification.

Section 10 of the Patents Act, 1970 provides that every specification, whether provisional or complete, shall describe the invention and shall begin with a title sufficiently indicating the subject-matter to which the invention relates.

Every complete specification is required to:

- (a) Fully and particularly describe the invention and its operation or use and the method by which it is to be performed
- (b) Disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection
- (c) End with a claim or claims defining the scope of invention for which protection is claimed
- (d) Be accompanied by an abstract to provide technical information on the invention.

**Answer 6A(ii)**

According to Section 2(j) of the Designs Act, 2000 proprietor of a new design includes

1. where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed
2. where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means in the respect and to the extent in and to which the design or right has been so acquired the person by whom the design or right is so acquired and
3. in any other case, means the author of the design and where the property in or the right to apply, the design has devolved from the original proprietor upon any other person includes that other person.

The following design are prohibited from registration under Section 4 of Design Act 2000

1. It is not new or original or
2. Has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration or
3. Is not significantly distinguishable from known designs or combination of known designs
4. Comprises or contains scandalous or obscene matter, shall not be registered.

**Answer 6A(iii)**

According to Section 39 of the Geographical Indications of Goods (Registration and Protection) Act, 1999, any person who:

- (a) Falsifies any geographical indication or
- (b) Falsely applies to goods any geographical indication or
- (c) Makes, disposes of, or has in his possession, any die, block machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a geographical indication or

- (d) Applies to any goods to which an indication of the country or place in which they were made or produced or the name and the address of the manufacture or person for whom the goods are manufactured is required to be applied under Section 71, a false indication of such country, place, name or address or
- (e) Tamper with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under Section 71 or
- (f) Causes any of the things above-mentioned in this Section to be done, shall unless he proves that he acted, without intent to defraud,

shall punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

It may be noted that the court may, for adequate and special reason to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

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

Section 37(1) of the Copyright Act, 1957 entitles every broadcasting organisation to have special right to be known as "broadcast reproduction rights" in respect of its broadcast.

Section 37(2) provides that the broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

As per Section 37(3) of the Act during the continuance of a broadcast reproduction right in relation to any broadcast, any person who, without the licence of the owner of the right does any of the following acts of the broadcast or any substantial part thereof,-

- a. Re-broadcast the broadcast or
- b. Causes the broadcast to be heard or seen by the public on payment of any charges or
- c. Makes any sound recording or visual recording of the broadcast or
- d. Makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or where it was licensed for any purpose not envisaged by such licence or
- e. Sells or gives on commercial rental or offer for sale or for such rental, any such sound recording or visual recording referred to in clause (c) or clause (d).

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## TAX LAWS & PRACTICE

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

**NOTE :** (1) Answer **ALL** Questions.

(2) **ALL** the references to sections in Part-I of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2023-24 unless stated otherwise.

(3) **ALL** the references to sections in Part-II of the Question Paper relate to the Provisions of GST Law and Customs Act, 1962.

(4) Wherever necessary, suitable assumptions can be made and the same be stated clearly in the answer.

(5) Working notes should form part of the answer.

### PART I

#### Question 1

Vijay, an Indian Citizen, was living in Delhi since 1972, he left for France on 1st August, 2017 and comes back on 2nd April, 2022. On the same day he joined BGH Industries Ltd., Delhi as a Chief Mechanic. He went to China for 15 days during the year in the month of July 2022.

He furnishes following details for the previous year 2022-23 about his salary income :

<b>Particulars</b>	<b>Amount (₹)</b>
Basic Salary	1,22,000 p.m.
Dearness allowance eligible for retirement benefits)	60,000 p.m.
Fixed medical allowance	5,000 p.m.
House rent allowance	25,000 p.m.
Transport allowance	2,000 p.m.

Bonus	2 months basic salary+ DA
Club membership fee reimbursed by employer	14,000 P. a.
Residence telephone bill paid by employer	22,000 p. a.
Contribution of employer to recognized provident fund	15% of basic salary + D. A.
Two children of Vijay study in the school run by the company. The cost of education in the similar school for the year would be ₹1,24,000 and the employee paid ₹ 50,000 to the school by way of fee.	

Vijay gives the following information with respect to two loans taken by him from scheduled banks for various purposes:

- (i) A housing loan of ₹ 34,00,000/- taken on 12th March, 2022 for the purchase of a house to be used for self-residence at a cost of ₹ 44,00,000/-. The stamp duty value of the house was ₹ 41,00,000/- at the time of purchase. Amount of repayment of loan during P.Y. 2022-23 was :

(A) towards principal - ₹ 1,22,000/-

(B) towards interest - ₹ 3,60,000/-

This is the first and only residential house owned by Vijay.

- (ii) A vehicle loan of ₹ 18,00,000/- taken on 29th May, 2022 for the purchase of new electric car for personal use. Amount of repayment of loan during P.Y. 2022-23 was :

(A) towards principal - ₹ 80,000/-

(B) towards interest - ₹ 1,75,000/-

Besides these loans, he has also paid a sum of ₹ 9,000 to a political party as contribution. The entire amount was paid in cash. Based on the facts of the case scenario given above, answer each of the following three parts treated as separately :

- (a) Determine residential status of Vijay for the assessment year 2023-24, along with detailed workings.
- (b) Compute income from salary of Vijay for the assessment year 2023-24, on the assumption that he has opted the scheme of section 115BAC.
- (c) With reference to loans taken and contribution to political party, compute the amount of tax benefits/deduction(s) available to Vijay under various provisions of Income-tax Act, 1961 for A.Y. 2023-24, so that he gets the maximum benefits assuming that he does not opt to pay tax under section 115BAC.

(5 marks each)

### Answer 1(a)

#### Computation of Residential Status of Mr. Vijay for AY 2023-24

Check the first basic condition i.e. Stay in India for a minimum period of 182 days or more during the previous year. Mr. Vijay has stayed in India for 349 days [365 days – 16 days (1+15)] during the previous year 2022-23. So, this test is satisfied. So, Mr. Vijay is resident in India during the previous year 2022-23.

Keeping in view the fact of the given case, Mr. Vijay satisfies the two additional conditions also namely: He is resident in India in two out of ten previous year preceding the relevant previous year.

PY	Stay in C.Y. (Days)	Stay during preceding 4 PY (Days)	Basic Condition Satisfied	Resident / Non-Resident
2021-22	Nil	123	None	Non-Resident
2020-21	Nil	488	None	Non-Resident
2019-20	Nil	854	None	Non-Resident

2018-19	Nil	1219	None	Non-Resident
2017-18	30+31+30+31+1= 123 days	1461	Second basic condition or None if left India for employment	Resident Or Non- resident (if left India for employment)
2016-17	365	1461	First	Resident
2015-16	366	1461	First	Resident

His stay in India is also more than 730 days in 7 previous year preceding the relevant previous year. Also, he left France on 1<sup>st</sup> August, 2017.

<i>PY</i>	<i>Stay in C.Y. (Days)</i>
2021-22	Nil
2020-21	Nil
2019-20	Nil
2018-19	Nil
2017-18	30+31+30+31+1=123 days
2016-17	365
2015-16	366
Total stay in 7 previous years	854

Hence, Mr. Vijay is resident and ordinarily resident in India for the Assessment Year 2023-24.

#### Answer 1(b)

#### Computation of Income from Salary of Mr. Vijay for AY 2023-24

<i>Particulars</i>	<i>Amount (Rs.)</i>
Basic Salary	14,64,000
Dearness Allowance	7,20,000
Fixed Medical Allowance (fully taxable)	60,000
House Rent Allowance covered u/s 10(13A) not eligible for exemption under the new scheme	3,00,000
Transport Allowance covered u/s 10(14) not eligible for exemption	24,000
Bonus (2 month basic salary + DA)	3,64,000

Club membership fee reimbursement (not exempt) [assumed for private purpose of employee]	14,000
Residence Telephone bill (mobile / telephone facility exempt perquisites) [Rule 3]	Nil
Concessional education (taxable as perquisites) 124000-50000	74,000
Employer's contribution to PF beyond 12% (taxable) 3% * 2184000 is taxable (1464000+720000)	65,520
Gross Salary	30,85,520
Less: Standard Deduction u/s 16(1) (Not applicable for AY 2023-24)	Nil
<b>Taxable Income from Salary</b>	<b>30,85,520</b>
<b>Taxable Income from Salary [round off]</b>	<b>30,85,500</b>

**Answer 1 (c)****Computation of amount of tax benefits/ deductions available for Mr. Vijay for A.Y. 2023-24**

Sr. No.	Particulars	Amount (Rs.)	Amount (Rs.)
1.	<b>Deduction allowable while computing income under the head "Income from house property":</b> Deduction under section 24(b) for interest on home loan of Rs. 3,60,000 in respect of self-occupied property restricted to 2,00,000.		2,00,000
2.	<b>Deduction under Chapter VI-A</b>		
	Deduction under section 80C: For repayment of Home loan principal to bank (actual subject to maximum of Rs. 1,50,000).	1,22,000	
	Deduction under section 80EEA: Since stamp duty value does not exceed Rs. 45 lakhs and Mr. Vijay does not own any residential house, so Mr. Vijay is eligible for deduction of upto Rs. 1,50,000 in respect of such interest on loan (which is not claimed under house property head) since loan is sanctioned between 1.4.2019 and 31.3.2022.  3,60,000 - 2,00,000 [claimed as deduction u/s 24(b)] = 1,60,000 restricted to Rs. 1,50,000, being the maximum permissible deduction.	1,50,000	

	Deduction under section 80EEB: Deduction for interest on loan for purchase of electric vehicle of Rs. 1,75,000 restricted to Rs. 1,50,000, being the maximum permissible deduction, since loan is sanctioned between 1.4.2019 and 31.3.2023. [No deduction in respect of principal repayment of loan for purchase of electric vehicle.]	1,50,000	
	Deduction under section 80GGC: Contribution of Rs. 9,000 to political party not allowable since the sum is paid in cash.	Nil	
	Deduction under Chapter VI-A from Gross Total Income		4,22,000
	<b>Total Deductions</b>		<b>6,22,000</b>

**Question 2**

- (a) *BAC & Co. is a partnership firm, which sets up a new industrial unit in Noida. It incurs following expenditure in connection with the new unit :*

S. No.	Particulars	Amount (₹)
(i)	Preparation of project report	3,00,000
(ii)	Market survey	6,00,000
<i>Total</i>		<i>9,00,000</i>

*Following further informations are available :*

S. No.	Particulars	Amount (₹)
(i)	Cost of Project	40,00,000
(ii)	Capital employed in the new unit	45,00,000

*Compute the deduction admissible to the firm u/s 35D of the Income Tax Act, 1961 for the assessment year 2023-24.*

*(5 marks)*

- (b) *Varun has two let out properties, the details for the previous year 2022-23 are given as under :*

Particulars	House-1 (₹)	House-2 (₹)
<i>Municipal value</i>	<i>3,70,000</i>	<i>7,20,000</i>
<i>Fair rent</i>	<i>3,90,000</i>	<i>6,80,000</i>
<i>Standard rent under the Rent Control Act</i>	<i>4,20,000</i>	<i>6,90,000</i>

<i>Actual rent</i>	6,00,000	6,00,000
<i>Municipal tax due for the year</i>	30,000	1,20,000
<i>Municipal tax of past years paid during the year</i>	37,000	1,03,500
<i>Interest on moneys borrowed C.Y.–paid</i>	3,50,000	2,70,000
<i>Interest on moneys borrowed C.Y.–not paid</i>	1,10,000	90,000

Compute income under the head 'house property' in the hands of Varun for the assessment year 2023-24, assuming none opted to pay tax under section 115BAC.

(5 marks)

- (c) Geet and Jeet are two minor sons of Raghav and Riya. Business income of Raghav is ₹3,40,000 and Salary income (computed) of Riya is ₹ 2,50,000. Income of Geet and Jeet from stage acting is ₹ 60,000 and ₹ 70,000 respectively. Besides interest on company deposits of Geet and Jeet (deposit was made out income from acting) are ₹40,000 and ₹ 1,000 respectively.

Geet and Jeet have also received the following birthday gifts during the financial year 2022-23 :

On 20th August, 2022, gift received by Jeet from his grandfather of ₹ 75,000. On 14th November, 2022, gift received by Geet of ₹ 60,000 from Riya's friend and ₹ 80,000 from Riya's sister. Compute the total income of Raghav, Riya, Geet and Jeet for the assessment year 2023-24, assuming that Raghav, Riya, Geet and Jeet does not opt to pay tax under section 115BAC.

(5 marks)

### Answer 2(a)

#### Qualifying Amount for Deduction u/s 35D:

In case of firm, preliminary expenditure is restricted to 5% of cost of project. Further, no deduction shall be admissible unless the accounts of the assessee for the year or years in which the expenditure specified is incurred have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288, before the specified date referred to in section 44AB and the assessee furnishes for the first year in which the deduction under this section is claimed, the report of such audit by that date in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

Hence, eligible preliminary expenditure is Rs. 2,00,000 (being 5% of Rs. 40,00,000) or actual

Expenditure incurred i.e. Rs. 9,00,000 whichever is lower.

Hence, eligible preliminary expenditure is Rs. 2,00,000

#### Quantum of Deduction u/s 35D:

Further, eligible preliminary expenditure is deducted in five equal instalments, beginning with the previous year of commencement of business or the previous year

in which the extension of undertaking is completed or the new unit commences production or operation.

Therefore, deduction u/s 35D in respect of preliminary expenditure for the A.Y.2023-24 is Rs. 40,000 (being 1/5th of Rs. 2,00,000)

**Answer 2(b)**

**Computation of Total Income from House Property of Mr. Varun for the A.Y. 2023-24**

<i>Particulars</i>	<i>House -I (Rs.)</i>	<i>House -II (Rs.)</i>
Municipal value	3,70,000	7,20,000
Fair rent	3,90,000	6,80,000
Higher of the two (A)	3,90,000	7,20,000
Standard rent (B)	4,20,000	6,90,000
Reasonably expected rent - lower of (A) and (B)	3,90,000	6,90,000
Actual rent	6,00,000	6,00,000
Gross annual value [*Expected Rent as gross annual value (higher from expected rent or actual rent)]	6,00,000	6,90,000*
Less : Municipal tax paid during the year	(37,000)	(1,03,500)
Net annual value	5,63,000	5,86,500
Less : Deduction u/s 24 @ 30% of NAV	(1,68,900)	(1,75,950)
Interest on moneys borrowed both paid and unpaid	(4,60,000)	(3,60,000)
<b>Income from House Property</b>	<b>(65,900)</b>	<b>50,550</b>

**Answer 2(c)**

**Computation of Total Income of Mr. Raghav, Ms. Riya and Minor sons Geet & Jeet for A.Y. 2023-24**

<i>Particulars</i>	<i>Raghav Rs.</i>	<i>Riya Rs.</i>	<i>Geet Rs.</i>	<i>Jeet Rs.</i>
<b>Income from Salary (Computed)</b>	-	2,50,000	-	-
<b>Income from Business (Given)</b>	3,40,000	-	-	-

<b>Income from Other Sources</b>				
Income from stage acting	-	-	60,000	70,000
Interest from company deposit received by Geet (to be clubbed in the hands of Raghav after exemption of Rs. 1,500)	38,500	-	-	-
Interest from company deposit received by Jeet (to be clubbed in the hands of Raghav after exemption of Rs. 1,500 or Income to be clubbed whichever is lower – Rs. 1,000)  *where the income of any minor is less than Rs. 1500 then the aforesaid exemption shall be restricted to the income so included in the total income of the individual.	-	-	-	-
Gift received by Jeet on 20 <sup>th</sup> August, 2022 from grandfather (Gift from a relative is not taxable)	-	-	-	-
Gift received by Geet on 14 <sup>th</sup> November, 2022 from Riya's friend (to be clubbed in the hands of Raghav)	60,000	-	-	-
Gift received by Geet on 14 <sup>th</sup> November, 2022 from Riya's sister is not taxable (Riya's sister is covered under Relative and gift from relative is not taxable)	-	-	-	-
<b>Income from Other Sources</b>	<b>4,38,500</b>	<b>2,50,000</b>	<b>60,000</b>	<b>70,000</b>

**Question 3**

- (a) Nisha, a resident individual, provides following details of her income/losses for the year ended 31.03.2023 :

S. No.	Particulars	Amount (₹)
1.	Long-term capital gain on sale of equity shares computed in accordance with section 112A	9,95,000
2.	Interest on fixed deposit (gross)	73,000
3.	Loss from sugar business	8,70,000

4.	Speculation profit	2,40,000
5.	Lottery income (Net of TDS)	75,000
6.	Loss incurred by the firm in which she is a partner	1,60,000
7.	Salary received as a partner from partnership firm. The same was allowed to firm.	60,000
8.	Brought forward short-term capital loss on sale of gold	2,30,000
9.	Brought forward loss on sale of equity shares of the nature specified u/s 111A	25,000

Compute gross total income of Nisha for the assessment year 2023-24 and the amount of loss that can be carried forward, assuming that she does not opt to pay taxes u/s 115BAC.

(5 marks)

- (b) SM Services, a partnership firm consists of 2 working partners, Sunil and Murthy with 60% and 40% share, respectively. As per the partnership deed, they are eligible for interest on capital @ 15% p.a. on their capital contribution of ₹ 18 lakh each and remuneration of ₹ 55,000 p.m. to Sunil and ₹ 45,000 p.m. to Murthy. The firm is engaged in manufacturing business. During the year ended 31st March, 2023 the net profit as per profit and loss account was ₹ 25,36,000 before considering interest on capital and remuneration to partners as well as the following items :

S. No.	Particulars	Amount (₹)
(i)	Current year revenue expenditure on scientific research	2,20,000
(ii)	Brought forward business loss of A.Y. 2018-19	32,000
(iii)	Brought forward business loss of A.Y. 2014-15	40,000
(iv)	Unabsorbed depreciation of A.Y. 2011-12	58,000
(v)	Unabsorbed capital expenditure on scientific research relating to P.V. 2019-20	75,000
(vi)	Current year capital expenditure on scientific research	4,25,000
(vii)	Current year depreciation under section 32	3,72,000

You are required to compute the total income of SM Services for the assessment year 2023-24 after considering the above items.

(5 marks)

- (c) Rajendra, aged 47 years, a resident individual, engaged in a retail business of Stationary products furnishes the following particulars of his income for the previous year 2022-2023:

S. No.	Particulars	Amount (₹)
(i)	Income from business	15,10,000
(ii)	LIC premium paid for dependent father, aged 75 years.	25,000
(iii)	Interest received from Public Provident Fund	15,000
(iv)	Interest from bank on savings bank account	22,000
(v)	Deposit in Public Provident Fund	1,30,000

You are required to calculate his tax liability and advise him whether he should opt for alternative tax regime under section 115BAC or not for assessment year 2023-24.

(5 marks)

### Answer 3(a)

#### Computation of Gross Total Income of Ms. Nisha for A.Y. 2023-24

Particulars	Amount (Rs.)	Amount (Rs.)
<b>Income from Business or Profession:</b>		
Salary received from partnership firm	60,000	
Loss incurred by firm, in which she is a partner (loss from a partnership firm cannot be set off against business income, since share of income of the firm is exempt u/s 10(2A))		
Speculation profit	2,40,000	
	3,00,000	
Less : Loss from sugar business Rs. 8,70,000 (set off to the extent of business income of Rs. 3,00,000)	(3,00,000)	Nil
Balance loss (Rs. 8,70,000 – Rs. 3,00,000 i.e. Rs. 5,70,000) to be set off from income from other sources to the extent of Rs. 73,000 and remaining loss from income under the head capital gains i.e. Rs. 4,97,000.		

<b>Capital Gains:</b>		
Long term capital gain on sale of equity shares computed as per section 112A	9,95,000	
Less : Loss from sugar business (current year loss is to be given priority over set off of brought forward loss)	(4,97,000)	
Less : Brought forward short-term capital loss on sale of gold	(2,30,000)	
Less : Brought forward loss on sale of equity shares of the nature specified u/s 111A	(25,000)	2,43,000
<b>Income from other sources</b>		
Interest from fixed deposit	73,000	
Less : Loss from sugar business	(73,000)	
Winning from lottery (75000/70 x 100)	1,07,143	1,07,143
<b>Gross Total Income</b>		<b>3,50,143</b>

**Answer 3(b)**

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
Net profit as per profit and loss account before interest on capital and remuneration to partners and other items		25,36,000
Less : Expenditure allowable from business income		
Interest @ 12% p.a. [being the maximum allowable as per section 40(b)] Rs. 18,00,000 12% x 2)	4,32,000	
Current year revenue expenditure on scientific research under section 35(1)(i)	2,20,000	
Current year depreciation under section 32(1)	3,72,000	
Current year capital expenditure on scientific research under section 35(1)(iv)	4,25,000	
Unabsorbed depreciation of A.Y. 2011-12 under section 32(2)	58,000	
Unabsorbed capital expenditure on scientific research relating to P.Y. 2019-20 under section 35(4)	75,000	(15,82,000)

<b>Book Profit (A)</b>		<b>9,54,000</b>
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<i>Particulars</i>	<i>Amount (Rs.)</i>
Book Profit	9,54,000
Less : Partners' remuneration allowable under section 40(b)	
(i) As per limit prescribed in section 40(b)	
On first Rs. 3,00,000 @ 90%	2,70,000
On the balance Rs. 6,54,000 @ 60%	3,92,400
Total	6,62,400
(ii) Remuneration actually paid or payable [Rs. 55,000*12 + Rs. 45000 * 12]	12,00,000
<b>(i) or (ii) whichever is less, is deductible (B)</b>	<b>6,62,400</b>
Profit from manufacturing business (A-B)	2,91,600
Less : Brought forward business loss of A.Y. 2014-15 [Not allowed to set off since 8 years have been already expired]	-
Less : Brought forward business loss of A.Y 2018-19	(32,000)
Profits and gains of business or profession	2,59,600

**Answer 3(c)****Computation of Total Income of Mr. Rajendra for the A.Y. 2023-24 under the regular provisions of the Income Tax Act, 1961**

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
i	Income from business		15,10,000
ii	Income from other sources		
	Interest received from Public Provident Fund (Exempt)	Nil	

	Interest from bank on saving bank account	22,000	22,000
	Gross total income		15,32,000
	Less : Deductions under Chapter VI-A		
	Deduction under section 80C		
	a) Deposit in Public Provident Fund b) LIC premium paid for dependent father (premium for life insurance policy of father is not allowed as deduction) Since the maximum deduction under section 80C is Rs. 150000 so Rs. 130000 is fully allowed	1,30,000 Nil	(1,30,000)
	Deduction under section 80TTA [Interest from saving bank account since the maximum deduction under section 80TTA is Rs.10000]		(10,000)
	Total Taxable Income		13,92,000

**Computation of Tax Payable by Mr. Rajendra for the AY 2023-24 under the regular provisions of the Income Tax Act, 1961**

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
Tax on total income of Rs. 13,92,000		
Up to Rs. 2,50,000	Nil	
Rs. 2,50,001 – Rs. 5,00,000 @ 5% of Rs. 2,50,000	12,500	
Rs. 5,00,001 – Rs. 10,00,000 @ 20% of Rs. 5,00,000	1,00,000	
Rs. 10,00,001 – Rs. 13,92,000 @ 30% of Rs. 3,92,000	1,17,600	2,30,100
Less : Rebate u/s 87A (Since total income exceed Rs. 5,00,000, no rebate allowed.)		Nil
Total		2,30,100

Add: Health and Education Cess @ 4% of Rs. 2,30,100		9,204
Total Tax and Cess payable		2,39,304
Round off u/s 288B		2,39,300

**Computation of Total Income of Mr. Rajendra for the A.Y. 2023-24 as per section 115BAC**

Gross Total Income as per regular provisions of the Income-tax Act, 1961 Rs. 15,32,000.

(No deduction under Chapter VI-A allowable). Hence, Total income as per section 115BAC is Rs. 15,32,000.

**Computation of Tax Payable by Mr. Rajendra for the AY 2023-24 as per section 115BAC**

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
Tax on total income of Rs. 15,32,000		
Up to Rs. 2,50,000	Nil	
Rs. 2,50,001 – Rs. 5,00,000 @ 5% of Rs. 2,50,000	12,500	
Rs. 5,00,001 – Rs. 7,50,000 @ 10% of Rs. 2,50,000	25,000	
Rs. 7,50,001 – Rs. 10,00,000 @ 15% of Rs. 2,50,000	37,500	
Rs. 10,00,001 – Rs. 12,50,000 @ 20 % of Rs. 2,50,000	50,000	
Rs. 12,50,001 – Rs. 15,00,000 @ 25 % of Rs. 2,50,000	62,500	
Rs. 15,00,001 @ Rs. 15,32,000 @ 30 % of Rs. 32,000	9,600	1,97,100
Less: Rebate u/s 87A (Since total income exceed Rs. 5,00,000, no rebate allowed.)		Nil
Total		1,97,100
Add : Health and Education Cess @ 4% of Rs. 1,97,100		7,884
Total Tax and Cess payable		2,04,984
Round off u/s 288B		2,04,980

In the instant case, tax liability under section 115BAC is lower, hence it is advisable to opt for provision of section 115 BAC of the Income tax Act, 1961.

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

- (a) Explain the term “return of loss” under the Income-tax Act, 1961. Can any loss be carried forward even if return of loss has not been filed as required under section 139(3) of Income-tax Act, 1961 ?

(5 marks)

- (b) “Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fees for technical services is to be taxed irrespective of territorial nexus”. Examine the correctness or otherwise of the statement with reference to the provisions of Income-tax Act, 1961.

(5 marks)

- (c) Deepak furnished his return of income for the assessment year 2023-24 on 22nd July, 2023. Due to missing information for payment of taxes in the return of income, the Assessing Officer considers it defective under section 139(9) of the Income-tax Act, 1961 :

- (i) What are the consequences if defect is not rectified within the time allowed ?
- (ii) Specify the remedies available if defect not rectified within time allowed by the Assessing Officer ?

(5 marks)

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

- (i) Examine the applicability of tax deduction at source provision, the rate and amount of TDS in the independent following cases for the assessment year 2023-24 under the Income-tax Act, 1961. Assume that all payments are made to residents :

- (a) Payment made by a company to Shanti Lal, sub-contractor, ₹ 3,50,000 with outstanding balance of ₹ 1,50,000 shown in the books as on 31st March 2023.
- (b) Fee paid on 1st January, 2023 to Dr. Bhanawat by Kishan (HUF) ₹ 40,000 for surgery performed on a member of the family.
- (c) Dhanpal wishes to purchase a residential house costing ₹ 60,00,000 from Priya. The house is situated at Mumbai. Both the buyers as well as the sellers are residents in India.
- (d) Arun has paid ₹ 5,00,000 on 12th October, 2022 to Cool Cold Storage Pvt.. Ltd. for preservation of fruits and vegetables. He is engaged in the wholesale business of fruits & vegetable in India having turnover of ₹ 4 crore during the previous year 2022-23.
- (e) Ravi, a salaried individual, has paid rent of ₹ 65,000 per month to Rajiv from 1st August, 2022 to 31st March, 2023. Rajiv has not furnished his Permanent Account Number.

(5 marks)

- (ii) Ajay, a property dealer, entered into an agreement with Mukesh to sell a plot on 6th April, 2022 for ₹ 55 lakh. He received an advance of ₹ 12 lakh from him

on the date of agreement by account payee cheque. Transfer took place on 12th September, 2022. The valuation determined by the stamp valuation authority on the date of agreement and date of transfer was ₹ 59 lakh and ₹ 63 lakh, respectively. Mukesh has sold this plot to Deepti on 24th March, 2023 for ₹ 65 lakh. The valuation as per stamp valuation authority was ₹ 64 lakh on 24th March, 2023.

Discuss the tax consequences of above, in the hands of Ajay and Mukesh. Also, compute the capital gain in the hands of Mukesh.

Note : None of the parties viz Ajay, Mukesh & Deepti are related to each other; the transactions are between outsiders.

(5 marks)

(iii) Discuss with logical reasoning whether the following are capital or revenue receipts/ expenses :

- (a) An amount of ₹ 1,60,000 was spent by a company for sending its production manager abroad to study new methods of production.
- (b) B & Co. received ₹ 4,00,000 as compensation from C & Co. for premature termination of contract of agency.
- (c) Payment of ₹ 60,000 as compensation for cancellation of a contract for the purchase of machinery with a view to avoid an unnecessary expenditure.
- (d) R Company Ltd. instead of receiving royalty year by year, received it in advance in lump sum.
- (e) An employee director of a company was paid ₹ 3,60,000 as a lump sum consideration for not resigning from the directorship.

(5 marks)

#### Answer 4(a)

A return of loss is a return which shows certain losses under Income-tax under various head of Incomes. Section 80 of the Income tax Act, 1961 provides that the losses specified therein cannot be carried forward, unless such losses are determined in pursuance of return filed under the provisions of section 139(3) of the Income tax Act, 1961.

Section 139(3) of the Income tax Act, 1961 states that to carry forward the losses specified therein; the return should be filed within the time specified in section 139(1) of the Income tax Act, 1961.

Following losses are covered by section 139(3) of the Income tax Act, 1961:

- Business loss to be carried forward under section 72(1);
- Speculation business loss to be carried forward under section 73(2);
- Loss from specified business to be carried forward under section 73A(2);
- Loss under the head "Capital Gains" to be carried forward under section 74(1); and
- Loss incurred in the activity of owning and maintaining race horses to be carried forward under section 74A(3).

However, loss from house property to be carried forward under section 71B and unabsorbed depreciation under section 32 can be carried forward even if return of loss has not been filed as required under section 139(3) of the Income tax Act, 1961.

#### Answer 4(b)

This statement is **correct**.

As per Explanation to section 9 of the Income tax Act, 1961, income by way of interest, royalty or fees for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1) of the Income tax Act, 1961, shall be included in the total income of the non-resident, whether or not:

- i. Non-resident has a residence or place of business or business connection in India;
- ii. Non-resident has rendered services in India.

In effect, the income by way of fees for technical services, interest or royalty from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and will be included in his total income, whether or not such services were rendered in India and irrespective of whether the non-resident has a residence or place of business or business connection in India.

#### Answer 4(c)

- i. If the defect is not rectified within the period of 15 days or such further extended period, then, the return would be treated as an invalid return and further it shall be deemed that the assessee had failed to furnish the return of Income. Accordingly, the consequential effect would be the same as if the assessee had failed to furnish the return of Income.
- ii. The Assessing Officer has the power to condone the delay and treat the return as a valid return, if the assessee has rectified the return after the expiry of 15 days or further extended period, but before the assessment is made.

#### Answer 4A(i)

	<i>Provisions</i>	<i>Rate of TDS</i>	<i>Amount of TDS</i>
(a)	Provisions of tax deduction at source under section 194C are attracted in respect of payment by a company to a sub-contractor under section 194C, tax is deductible at the time of <b>credit or payment, whichever is earlier</b> @ 1% in case of the payment is made to an individual.  Since the aggregate amount credited or paid during the year is ₹5,00,000 (Rs. 3,50,000 paid plus Rs. 1,50,000 outstanding balance as on 31.03.2023), Hence tax is deductible @ 1% on Rs. 5,00,000	1%	Rs. 5,000
(b)	As per the provisions of section 194J, a Hindu undivided family is required to deduct tax at source on fees paid for professional services only if the total sales, gross receipts or turnover form the business or profession, as the case	NIL	NIL

	<p>may be, in the financial year preceding the current financial year exceeds and such payment made for professional services is <b>not exclusively for the personal purpose</b> of any member of Hindu individual family.</p> <p>Section 194M, provides for deduction of tax at source by a HUF, which is not required to deduct tax at source under section 194J in respect of fees for professional service if such sum or aggregate of such sum exceeds Rs. 50,00,000 during the financial year.</p> <p>In the given case, the fees for professional service to Dr. Bhanawat is paid on 1st January, 2023 for a personal purpose, therefore, section 194J is not attracted.</p> <p>Section 194M would have been attracted, if the payment or aggregate of payments exceeded ₹50,00,000 in the P.Y. 2022-23. However, since the payment does not exceed ₹50,00,000 in this case, there is no liability to deduct tax at source.</p>	(Due to personal purpose)	
(c)	<p>A per section 194-IA, any person, being a transferee, responsible for paying to a resident transfer or any sum by way of consideration for transfer of any immovable property (i.e. any land other than rural agricultural land) or any building or part of a building shall be liable to deduct tax at source @ 1% where the total amount of consideration for the transfer of immovable property is not less than ₹50 lakh.</p> <p>Since the sale consideration of house property exceeds ₹50 lakh, Dhanpal is required to deduct tax at source u/s 194 IA. The tax to be deducted u/s 194-IA would be ₹60,000 being 1% of ₹60,00,000.</p>	1%	Rs. 60,000
(d)	<p>The arrangement between Arun, the customer, and M/s. Cool Cold Storage Pvt. Ltd., the cold storage owner, is basically contractual in nature and main object of the cold storage is to preserve perishable goods by mechanical process and storage of such goods is only incidental.</p> <p>Hence, the provisions of section 194C will be applicable to the amount of ₹5 lakh paid by Arun to the cold storage company.</p> <p>Accordingly, tax has to be deducted @ 2% (payment made to company) on ₹5 lakh.</p> <p>TDS u/s 194C = ₹5 lakh x 2% = ₹10,000</p>	2%	₹10,000

(e)	<p>Ravi, being a salaried individual, has to deduct tax at source @ 5% u/s 194-IB on the annual rent paid by him from the last month's rent (rent of March, 2023), since the rent paid by him exceeds ₹50,000 p.m.</p> <p>Since his landlord Mr. Rajiv has not furnished his PAN to Ravi, tax has to be deducted @ 20% instead of 5%.</p> <p>However, the same cannot exceed ₹65,000, being rent for March, 2023.</p> <p>TDS u/s 194-IB = ₹ 5,20,000 (₹ 65,000 x 8) x 20% = ₹1,04,000, but restricted to ₹65,000.</p>	20%	₹65,000
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#### Answer 4A(ii)

##### Tax consequences in the hands of Mr. Ajay

As per section 50C of the Income tax Act, 1961, where the actual sale consideration is less than the value adopted by the Stamp Valuation Authority for the purpose of charging stamp duty, and such stamp duty value exceeds 110% of the actual sale consideration, then, the value adopted by the Stamp Valuation Authority shall be taken to be the full value of consideration.

In a case where the date of agreement is different from the date of registration, stamp duty value on the date of agreement can be considered provided the whole or part of the consideration is received by way of account payee cheque/bank draft or by way of ECS through bank account or through such other electronic mode as may be prescribed, on or before the date of agreement.

In this case, since ₹12 lakhs is received through account payee cheque on the date of agreement, stamp duty value on the date of agreement would be considered for determining the full value of consideration.

Accordingly, in this case, business income would be computed in the hands of Ajay, for A.Y.2023-24, taking the actual consideration of ₹55 lakh of plot as the full value of consideration arising on transfer of such plot, since the stamp duty value on the date of agreement does not exceed 110% of the actual consideration. [Section 43CA]

##### Tax consequences in the hands of Mr. Mukesh

In case, immovable property is received for inadequate consideration, **the difference between the stamp duty value and actual consideration would be taxable** under the head income from other sources under section 56(2)(x) in the hands of the recipient, if such difference exceeds the higher of ₹50,000 or 10% of actual sales consideration.

In a case where the date of agreement is different from the date of registration, stamp duty value on the date of agreement can be considered provided the whole or part of the consideration is paid by way of account payee cheque/bank draft or by way of ECS through bank account or through such other electronic mode as may be prescribed, on or before the date of agreement.

In this case, since ₹12 lakhs is paid through account payee cheque on the date of agreement, stamp duty value on the date of agreement would be considered.

Therefore, **nothing would be taxable in the hands of Mr. Mukesh under the head "Income from Other Sources"** in A.Y.2023-24 since the difference between stamp

duty value on the date of agreement and actual consideration does not exceed ₹5,50,000 being the higher of ₹50,000 and 10% of consideration.

At the time of subsequent sale of property by Mukesh to Deepti, short-term capital gains would arise in the hands of Mukesh in A.Y.2023-24, since the property is held by him for less than 24 months.

#### Computation of Short-term Capital Gain

Full value of consideration	₹65 lakh
(Since actual consideration of ₹65 lakh is higher than stamp duty value of ₹ 64 lakh)	
Less : Cost of acquisition	<u>₹ 55 lakh</u>
Short-term capital gains	<b>₹ 10 lakh</b>

#### Answer 4A(iii)

S. No	Correct Answer	Reason
(a)	Revenue Expenditure	Amount spent by a company for sending its production manager abroad to study new methods of production is revenue expenditure to be allowed as a deduction because the new knowledge and exposure of that manager will assist the company in improving its existing methods of production etc.
(b)	Capital Receipts	Receipt in substitution of a source of income is a capital receipt. Therefore, the amount received by B & Co. from C & Co. for premature termination of an agency contract is a capital receipt though the same is taxable under Section 28(ii)(c) of the Income tax Act, 1961.
(c)	Capital Expenditure	This is a capital expenditure, as any expenditure incurred by a person to free himself from a capital liability is a capital expenditure. In the given case, the payment of ₹ 60,000 for cancelling the order for purchase of the machinery has helped the assessee to become free from an unnecessary capital liability.
(d)	Revenue Receipt	Receipt of lump sum royalty in lieu of future royalties is a revenue receipt, as it is an income from royalty.
(e)	Revenue Receipt	The amount of ₹3,60,000 received for not resigning from the directorship is a reward received from the employer. Therefore, it is a revenue receipt.

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

MNO & Co, a Partnership firm, is engaged in the manufacturing of equipment in the State of Gujarat. The firm became liable for registration under GST on 14th July, 2022. It applied for registration on 14th August, 2022 and was granted registration certificate by department on 18th August, 2022.

MNO & Co. supplied goods to Vikram Ltd. The terms of the contract stipulated that goods are delivered to the factory of Vikram Ltd. Goods were removed from the factory of MNO & Co. on November 9, 2022 and were delivered to the factory of Vikram Ltd. on November 15, 2022. Invoice was issued on November 18, 2022 and payment was credited to MNO & Co's account on December 20, 2022. However, the entry was made in the books when the cheque was received, that is on November 19, 2022.

MNO & Co, is dealing in taxable as well as exempted items. MNO & Co. has provided following information of a consignment which is to be supplied:

S. No.	Particulars	Amount (₹)
(i)	Taxable value of supplies indicated on tax invoice	28,000
(ii)	Value of exempted supplies shown separately in tax invoice in S No. (i) above	13,000
(iii)	Value of goods to be sent to job worker on delivery challan	16,000

Note :- All amount above are excluding GST.

MNO & Co. has also exported some equipment by air. The FOB price of goods exported is US \$ 60000. The shipping bill was presented electronically on 17th October, 2022 and proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 29th November, 2022. The rate of exchange notified by Central Board of Indirect taxes and Customs (CBIC) on 17th October, 2022 and 29th November, 2022 are 1 US \$ = ₹ 78 and 1 US \$ = ₹ 77 respectively. Other details are as follows :

Particulars	Date	Rate of Duty
Presentation of shipping bill	17th October, 2022	12%
Let Export Order	29th November, 2022	10%

Based on the facts of the case scenario given above, answer the following questions with reference to GST law and Custom Law :

- (a) What will be effective date of registration and also is there any requirement to issue revised invoices ? Correct legal provision should form part of your answer.

(5 marks)

- (b) With reference to transaction with Vikram Ltd., determine the Time of Supply for the purpose of payment of Tax.

(5 marks)

- (c) *Decide whether in respect to goods supplied to Vikram Ltd. MNO & Co. needs to mandatory generate e-way bill or not ? Assume this is the case of intra-state and rate of tax on taxable goods to be CGST and SGST @ 9% each.*

(5 marks)

- (d) *You are required to determine the export duty payable under Customs law in respect to explored equipment.*

**Answer 5(a)**

<b>Particulars</b>
<p>A supplier whose aggregate turnover in a financial year exceeds the threshold limit in a State/Union Territory is liable to apply for registration within 30 days from the date of becoming liable to registration (i.e., the date of crossing the threshold limit of Rs. 20 lakh/ 40 lakh) vide Section 22 of Central Goods &amp; Services Tax Act, 2017.</p> <p>Where the application is submitted within the said period, the effective date of registration is the date on which the person becomes liable to registration; otherwise it is the date of grant of registration. [Rule 10(3) Central Goods and Services Tax Rules, 2017]</p> <p>In view of the aforesaid provisions, effective date of registration will be 18<sup>th</sup> August, 2022, since company applied after 30 days of become eligible.</p> <p>Every registered person who has been granted registration with effect from a date earlier than the date of issuance of registration certificate to him, may issue revised tax invoices in respect of taxable supplies effected during this period within 1 month from the date of issuance of registration certificate. [Section 31(3)(a) Central Goods and Services Tax Act, 2017]</p> <p>Since effective date of registration is not retrospective date hence there is no need to issue any revised invoice.</p>

**Answer 5(b)**

<b>Particulars</b>
<p>As per Section 12(1) of Central Goods and Services Tax Act, 2017, the time of supply of goods shall be the earlier of the following dates, namely:—</p> <p>a) the date of issue of invoice by the supplier or the last date on which he is required to issue invoice under section 31 of Central Goods and Services Tax Act, 2017;</p> <p style="text-align: center;"><b>or</b></p> <p>b) The date on which the supplier receives the payment with respect to the supply.</p> <p>However, advance received in respect of supply of goods is not liable to be taxed at the time of receipt vide Notification No. 66/2017 Central Tax dated 15.11.2017. Therefore, the date of payment in respect of supply of goods shall not be relevant for determining the time of supply.</p> <p>Further, Section 31 of the Central Goods and Services Tax Act, 2017 provides that a registered person supplying taxable goods shall issue a tax invoice, before or at the time of, —</p>

(a) removal of goods for supply to the recipient, where the supply involves movement of goods;

**or**

(b) Delivery of goods or making available thereof to the recipient, in any other case.

As per the above scenario, various dates are as under:

Actual date of issue of invoice : November 18, 2022

Due date for issue of invoice : November 09, 2022

(as supply involves movement of goods)

Date of receipt of payment : November 19, 2022

(earlier of entry in books of accounts and credit made in the bank account)

Therefore, the time of supply would be the earliest of the above dates, that is, November 09, 2022.

#### Answer 5(c)

Particulars
E-way bill mandatory needs to be generate whenever there is a movement of goods of consignment value exceeding Rs. 50,000.
Consignment value of goods shall be the value includes value declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the Central Tax, State or Union Territory Tax, Integrated Tax and Cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.
So as per above provision consignment value of the transaction effected through tax invoice in the given case shall be: Rs.28,000 + Rs.5,040 (Tax i.e. 18% of Rs.28,000) + 16,000 = Rs. 49,040.
Since consignment value is not more that Rs. 50,000, E- way not mandatory required to be generate.

#### Answer 5(d)

#### Computation of Export Duty

#### Particulars

FOB price of goods <b>(Note-1)</b>	US \$ 60,000
Assessable Value (US\$ 60,000 x Rs.78) <b>(Note-2)</b>	Rs. 46,80,000
<b>Export duty @ 10% (Note-3)</b>	<b>Rs. 4,68,000</b>

Notes: -

- (1) As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
- (2) As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBIC on the date of presentation of shipping bill of export.
- (3) As per section 16(1) (a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.
- (4) Export Duty does not carry Social Welfare Surcharge (SWS).

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

**Question 6**

- (a) *Rama Private Limited, Mumbai, a registered supplier, manufactures taxable goods. It provides the following details of taxable inter-State supply made by it during the month of March 2023 :*

S. No.	Particulars	Amount (₹)
(i)	List price of taxable goods supplied inter-State (exclusive of taxes)	20,00,000
(ii)	Subsidy received from the Central Government for supply of taxable goods to government School {exclusively related to supply of goods included at S.No. (i)}	3,50,000
(iii)	Tax levied by Municipal Authority	20,000
(iv)	Special packing at the request of customer to be charged to the customer	15,000
(v)	Late fee paid by the recipient of supply for delayed payment of consideration (Recipient has agreed to pay ₹ 6,000 (plus GST @ 18%) in Lump Sum and no additional is payable by him over and above such amount)	7,080

*The list price of the goods is net of the subsidies received. However, the other charges/ taxes/fee are charged to the customers over and above the list price. Rama Private Limited offers 3% discount on the list price of the goods which is separately shown in the invoice for the goods.*

*Calculate the total value of taxable supplies made by Rama Private Limited during the month of March, 2023 and assume the rate of IGST is 18%.*

*(5 marks)*

- (b) Yash started the business of supplying shoes in the State of Karnataka from 1st April, 2022. He makes only intra-State supplies. His turnover for April-June quarter was ₹20 lakh and for July-September quarter was ₹ 110 lakh. Further, one-fourth of his total turnover in each of the quarter was exempt from GST. Being eligible for composition scheme, Yash got himself registered under the composition scheme with effect from 1st July, 2022.

You are required to compute the tax payable by Yash under composition scheme assuming that he is a manufacturer.

Will your answer be different if Yash is a trader ? Give your answer supported with the relevant provisions of the CGST Act, 2017.

(5 marks)

- (c) Shyam Ltd., a registered person, is engaged in the business of spices. It provides following details in relation to GST paid on inward supplies procured by it during the month of March, 2023 :

S. No.	Particulars	Amount (₹)
1)	Raw spices purchase	80,000
	– Raw spices used for sale to customers	20,000
	– Raw spices used for personal use of directors	
2)	Electric machinery purchased for being used in the manufacturing process	35,000
3)	Motor vehicle used for transportation of the employee (seating capacity 8 persons)	55,000
4)	Payment made to contractor for construction of staff quarter.	2,00,000

Determine the amount of ITC that can be availed by Shyam Ltd. for the month of March, 2023 by giving the necessary explanation for treatment of various items. Subject to the information given above, all the other conditions necessary for availing ITC have been fulfilled.

(5 marks)

- (d) Calculate FOB Value, Cost of Insurance, Cost of Freight and Assessable Value under Custom Law, where only the CIF value is given as US \$ 8,000. Exchange rate notified by RBI and CBIC are ₹ 78 and ₹ 79 respectively for one US \$.

(5 marks)

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

**Question 6A**

- (i)(a) Piyush is a supplier of taxable goods in Karnataka. He got registered under GST in the month of April, 2023 and wishes to pay his IGST liability for the month. Since he is making the GST payment for the first time, he is of the view that he needs to mandatorily have the online banking facility to make payment of GST; offline payment is not permitted under GST. You are required to advise him with regard to following issues :

- (i) Are manual challans allowed under GST ?
- (ii) What is the validity period of the payment challan ?
- (iii) Is cross utilization among Major and Minor heads of the electronic cash ledger permitted ?

(3 marks)

- (b) What will be the late fee (CGST + SGST) for delay in filing of Annual Return under section 44 of the CGST Act, 2017 for financial year 2022-23, if delay is for 47 days and turnover of the company was ₹ 5.20 crore during the relevant financial year.

(2 marks)

- (ii) A Government Department is registered under GST. Its aggregate turnover in the preceding financial year was ₹ 22 crore. You are required to comment with the help of relevant provisions whether the said Department is required to issue e-invoices in the current financial year or not ?

(5 marks)

- (iii) ABT Ltd. has business places in 4 states of India and accordingly registered with the GST authorities in each state. One of its branch located in Karnataka defaulted for payment of tax for the month of March, 2023. Upon conclusion of adjudication proceedings, the authorities believe that they can proceed for recovery U/S 79 of the CGST Act, 2017 against any of the registration of ABT Ltd. located in 4 states although the default is made by of its branch located in Karnataka only. Comment on the view of the authorities and also state the various methods available for recovery of the amounts payable to department.

(5 marks)

- (iv) GMEGA Events, an event management company registered under CGST Act, 2017 at Mumbai, organizes a marriage function for Rakesh of Hubli (Karnataka). Determine the place of supply as per IGST Act, 2017 in the following independent cases :

- (i) If Rakesh is registered at Hubli (Karnataka) and function held at London.
- (ii) If Rakesh is registered at Hubli (Karnataka) and function held at New Delhi.
- (iii) If Rakesh is unregistered person and function held at New Delhi.
- (iv) If Rakesh is unregistered person and function held at London.

(5 marks)

**Answer 6(a)**

**Computation of total value of Taxable Supplies made by Rama Private Ltd.  
during the month of March 2023**

<i>Particulars</i>	<i>Amount (Rs.)</i>
List Price of the Goods	20,00,000
Subsidy amounting to Rs.3,50,000 received from the Central Government [Since the subsidy is received from the Government, the same is not includible in the value in terms of Section 15(2)(e) of the Central Goods and Services Tax Act, 2017]	NIL
Tax levied by the Municipal Authority [Includible in the value as per Section 15(2)(a) of the Central Goods and Services Tax Act, 2017].	20,000
Packing charges [Being incidental expenses, the same are includible in the value as per section 15(2)(c) of the Central Goods and Services Tax Act, 2017]	15,000
Late fees paid by recipient of supply for delayed payment (Rs.7,080 x 100/118) [Includible in the value as per Section 15(2)(d) of the Central Goods and Services Tax Act, 2017]	6,000
<b>Total</b>	<b>20,41,000</b>
<b>Less:</b> Discount offered = 3% of List Price (Rs.20,00,000*3% ) Since discount is known at the time of supply, it is deductible from the value in terms of Section 15(3)(a) of the Central Goods and Services Tax Act, 2017.	(60,000)
<b>Total Value of Taxable Supplies</b>	<b>19,81,000</b>

**Answer 6(b)**

A registered person opting for Composition Levy for goods pays tax at the rates mentioned below during the current financial year, in lieu of the tax payable by him under regular scheme:

<b>Type of dealer</b>	<b>Composition Tax Rate</b>
Manufacturers, other than manufacturers of notified goods	1% (0.5% CGST + 0.5% SGST/UTGST) of the turnover in the State/ Union territory.

Trader	1% (0.5% CGST + 0.5% SGST/UTGST) of turnover of taxable supplies of goods & services in the State / Union territory.
<p>Explanation 2 to section 10 Central Goods &amp; Services Tax Act, 2017 provides that for the purposes of determining the tax payable by a person under this section, the expression "turnover in State or turnover in Union territory" shall not include the value of following supplies, namely :-</p> <p>(i) supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and</p> <p>(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount</p>	
<p><b>Tax payable by Yash under composition scheme is as follows:</b></p> <p><b>(i) In case where Yash is a manufacturer:</b> Tax payable by him under composition scheme will be on aggregate turnover.</p> <p>CGST = ₹ 110 lakh x 0.5% = ₹ 55,000</p> <p>SGST = ₹ 110 lakh x 0.5% = ₹ 55,000</p> <p><b>(ii) In case where Yash is a trader:</b> The answer would be no different as the legal position for manufacturers and traders is same for the purpose of composition scheme under section 10 of the Central Goods and Services Tax Act, 2017.</p> <p>Tax payable by him under composition scheme will be as follows only on taxable turnover.</p> <p>CGST = ₹110 lakh x 75% (as 25% of turnover is exempt) x 0.5% = 82.50 lakh x 0.5% = ₹ 41,250</p> <p>SGST = ₹110 lakh x 75% (as 25% of turnover is exempt) x 0.5% = 82.50 lakh x 0.5% = ₹ 41,250</p>	

**Answer 6(c)****Computation of ITC that can be availed by Shyam Ltd. for the month of March 2023**

Particulars	ITC (₹)
Purchase of Raw spices which are sold to customers. (Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course or furtherance of his business.)	80,000
Purchase of Raw spices for personal use of directors. (ITC is not available on goods used for personal consumption under Section 17(5) of the Central Goods and Services Tax Act, 2017.)	Nil

Electric machinery purchased for being used in the manufacturing process.  (Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course of furtherance of his business.)	35,000
Motor vehicle used for transportation of employee.  (ITC on motor vehicles for transportation of persons with seating capacity $\leq$ 13 persons (including the driver) is blocked under section 17(5) of the Central Goods and Services Tax Act, 2017 except when the same are used for :  (i) making further taxable supply of such motor vehicles (ii) making taxable supply of transportation of passengers (iii) making taxable supply of imparting training on driving such motor vehicles.	Nil
Payment made to contractor for construction of staff quarter.  [ITC is not available for works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. Section 17(5) of the Central Goods and Services Tax Act, 2017]	Nil
<b>Total Input Tax Credit (ITC) Available</b>	<b>1,15,000</b>

**Answer 6(d)**

Particulars
As per Rule 10(2) proviso 3 of Customs Valuation (Determination of Value of Imported Goods) Rule, 2007 where FOB value of goods, cost of insurance, and freight are not ascertainable, then:  Freight has to be taken as 20% of FOB value; and  Insurance has to be taken @ 1.125% of FOB value; and  Rate notified by CBIC has to be taken (i.e. Rs.79 per USD)

**Hence, FOB Value, cost of insurance and cost of freight and assessable value shall be computed as follows:**

Particulars	Amount (Rs.)
Assessable Value will be the CIF Value (US\$ 8,000 x Rs.79)	6,32,000
Less: Cost of Insurance (Rs. 6,32,000/121.125 x 1.125) (Roundoff)	5,870

Less: Cost of Freight (Rs. 6,32,000/121.125 x 20) (Roundoff)	1,04,355
<b>FOB Value</b>	<b>5,21,775</b>

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

Sr. No.	Particulars
(i)	Manual or physical challans are not allowed under the GST regime. It is mandatory to generate challans online on the GST Portal.
(ii)	Payment Challan is valid for a period of 15 days from the date of generation of challan.
(iii)	A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the of the Central Goods and Services Tax Act, 2017 to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess.

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

Particulars
As per amendment notification no. 07/2023 CT dated 31.03.2023, In case of turnover is more than 5 Crore The late fee payable is the lower of: <ul style="list-style-type: none"> <li>(i) Rs.100 per day [Central Goods and Services Tax (CGST) + State Goods and Services Tax (SGST)]</li> <li style="text-align: center;"><b>or</b></li> <li>(ii) 0.04 % of turnover [Central Goods and Services Tax (CGST) + State Goods and Services Tax (SGST)]</li> </ul> Hence in the given case Late Fees is given below: <ul style="list-style-type: none"> <li>(i) Rs.100 per day for 47 days = Rs. 4,700/-</li> <li style="text-align: center;"><b>or</b></li> <li>(ii) 0.04% of Rs. 5.20 crores = Rs. 20,800/-</li> <li style="padding-left: 40px;">Whichever is lower = Rs. 4,700/-</li> </ul> Hence the late fees will be Rs. 4,700.

**Answer 6A(ii)**

Particulars
Following entities are exempt from the mandatory requirement of e-invoicing: <ul style="list-style-type: none"> <li>(a) Special Economic Zone units.</li> </ul>

<p>(b) Insurer or banking company or financial institution including Non-Banking Financial Company (NBFC).</p> <p>(c) GTA supplying services in relation to transportation of goods by road in a goods carriage.</p> <p>(d) Supplier of passenger transportation service.</p> <p>(e) Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens.</p> <p>(f) Government Department and a local authority.</p>
<p>Further, the above taxpayers exempted from the mandatory requirement of e-invoicing are required to provide a declaration on the tax invoice stating that though their aggregate turnover exceeds the notified aggregate turnover for e-invoicing, they are not required to prepare an e-invoice.</p>
<p>Above mentioned entities are not required to issue e-invoices, even if their turnover exceeds Rs.10 crore in the preceding financial year from 2017-18 onwards but are required to provide a declaration as discussed above.</p> <p>Thus, in the given case, the Government Department is not required to issue e-invoices in the current financial year, even if it's aggregate turnover has exceeded Rs.10 crore.</p>

**Answer 6A(iii)**

<b>Particulars</b>
<p><b>View of the department is correct.</b></p> <p>By way of an explanation, the scope of Section 79 has been expanded to include distinct person, which means that recovery proceedings can be initiated against any of the persons falling under the same PAN.</p>
<p>Various Methods available for recovers of Tax area as under-</p> <ol style="list-style-type: none"> <li>1. Deduction out of any money owing to defaulter.</li> <li>2. By detaining and selling the goods belonging to the defaulter.</li> <li>3. Recovery from any other person who owes money to defaulter.</li> <li>4. Collection by detention of any moveable or immoveable property.</li> <li>5. Recovery through District Collector.</li> <li>6. Recovery through Magistrate.</li> </ol>

**Answer 6A(iv)**

<b>Sr. No.</b>	<b>Place of Supply</b>	<b>Provisions</b>
(i)	<b>Hubli (Karnataka)</b>	For supplies related to organization of events or assigning sponsorship to such events, when such service is provided to a registered person, the place of supply is

		location of recipient. Since recipient is registered at Hubli, the place of supply shall be Hubli (Karnataka).
(ii)	<b>Hubli (Karnataka)</b>	If Recipient is registered, the place of supply is location of recipient. So the place of supply shall be Hubli (Karnataka), here event is not relevant.
(iii)	<b>New Delhi</b>	When it is provided to an unregistered person, the place of supply is the location where the event is actually held in India.  The recipient being an unregistered person, the place of supply is the location where the event is held i.e., New Delhi.
(iv)	<b>Hubli (Karnataka)</b>	When it is provided to an unregistered person, and if the event is held outside India, the place of supply is the location of recipient.  The recipient being an unregistered person and the event held outside India, the place of supply is the location of the recipient i.e., Hubli (Karnataka) and not the location where the event is held.

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